

DECISION

Dispute Codes: OPL, MNDC and FF

Introduction

This application was brought by landlord seeking an Order of Possession pursuant to a Notice to End Tenancy for landlord use served by putting it through the tenant's mail slot on September 26, 2009. The landlord also sought a Monetary Order for unpaid rent in the event that the tenant did not honor the Notice to End Tenancy and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail sent on October 16, 2009, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent if the tenant has not vacated.

Background and Evidence

This tenancy began on December 1, 2006. Rent is \$2,300 per month and the landlord holds a security deposit of \$1,150 paid on or about December 1, 2006.

During the hearing, the landlord gave evidence that the tenancy is under a fixed term rental agreement set to end on July 31, 2011.

The landlord stated that had served the two-month notice on September 26, 2009 with an end of tenancy date of November 30, 2009. With it, he returned the tenant's post dated cheque for November.

Analysis

Section 49(2) of the *Act* which deals with a notice to end tenancy for landlord use provides that:

“...a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be...”

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Therefore, as section 49 of the *Act* makes no provision to end a fixed term agreement before its expiry date with a notice for landlord use, I cannot support the notice with an Order of Possession as requested by the landlord.

In addition, as I cannot anticipate the amounts of any monies owing, made even more uncertain by this decision, I cannot consider a monetary order at this time.

Conclusion

The application is dismissed without leave to reapply on the Notice to End Tenancy dated September 25, 2009.