

DECISION

Dispute Codes: OPC and FF

Introduction

This matter was originally heard on November 12, 2009 on the landlords' application for an Order of Possession pursuant to a one month Notice to End Tenancy for cause served on September 12, 2009.

By application of November 20, 2009, the tenant made application for Review Consideration and was granted the present Review Hearing by a Decision granted on December 3, 2009. The Review Hearing was granted on grounds, among others, that the tenant had not been served with the original Notice of Hearing as, when she attempted to pick up the registered mail at the post office, the package was not released to her as she had no identification in the name of the alias she had been using.

Issues to be Decided

The present hearing, as in the original hearing, requires a decision on whether the landlords remain entitled to an Order of Possession.

Background and Evidence

The resent landlords purchased the rental building while the subject tenancy was underway and were not certain of the start date. The tenant stated that the tenancy began on February 1, 2006 and that she paid a security deposit of \$350 on or about that date.

The landlords stated that the previous landlord had not passed the security deposit forward but provided a lawn mower and other equipment in lieu. However, the landlord read from the Statement of Adjustments, and it is clear that the tenant paid and is entitled to a security deposit credit of \$350 and the conversion to equipment was a separate matter between the landlord and the vendor. Rent is \$675 per month.

During hearing, the tenant gave evidence that she had not received a copy of a synopsis of claims submitted by the landlord and read in order each of the documents with which she had been provided. The landlords were of the view that they had provided the evidence, but stated an assumption that some evidence was provided to the other party by the branch. That raised a substantial doubt as to the certainty that the tenant had received all evidence.

I note that in his decision of December 3, 2009 granting this Review Hearing, the Dispute Resolution Officer wrote:

“As the review application was filed on the basis that the tenants did not receive the landlord’s application for dispute resolution or any accompanying evidence, **I order** the landlord to serve on the tenants a copy of their application and any evidence on which the landlord intends to rely, **no later than 7 days** before the re-scheduled hearing date.”

Analysis

I find that the landlords did not follow the direction to provide all evidence to the tenant as directed in the Review Consideration decision of December 3, 2009.

Conclusion

Therefore, I find that the Review Hearing cannot be fairly and fully heard and that, therefore, I find that my Decision and Order of Possession issued on November 12, 2009 must be set aside and are of no force or effect.

The landlords advised that they now are in need of the rental unit for their own use and will be proceeding with a Notice to End Tenancy under section 49 of the *Act* and they are fully aware of the provisions of sections 50 and 51 of the *Act* with respect to such notice.

While the parties attempted to negotiate a mutual agreement to end the tenancy, they were unable to come to terms during the hearing.

January 13, 2010