

DECISION

Dispute Codes

OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on February 19, 2010.

The general manager and both site managers appeared for the landlord and the tenant and her representative appeared. All parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

This month to month tenancy started on October 15, 1993. At the present time rent is \$814.00 per month and is due on the first of each month. The tenant paid a security deposit of \$325.00 on October 15, 1993.

The landlord testifies that the tenant has been repeatedly late with her rent. The landlord claims the tenant has a history of late rent payments. She paid rent late on four occasions in 2008. The tenant signed an agreement on April 22, 2009 to pay rent on the first of each month. The landlord claims that despite this new agreement the tenant was late with rent in July, September

and December, 2009 and January, 2010. A One Month Notice to End Tenancy for cause was issued on January 04, 2010 at approximately 10.00 a.m. and was posted through the tenants'

mail slot by the site manager. The date given on this Notice for the tenant to vacate the rental unit was February 28, 2010. The reason given on this Notice was that the tenant has been repeatedly late paying rent. The tenant did not dispute this Notice and rent for January was accepted for use and occupancy only on January 08, 2010.

The tenant paid her rent through a third party for February, 2010 by cheque; however, this rent cheque was returned by the bank as there were insufficient funds available to honour it. The tenant has not paid rent for March or April, 2010.

The landlord seeks an Order of Possession to take effect as soon as possible.

The tenant testifies that she did not receive the One Month Notice the landlord states was posted through her mail slot in January, 2010. The tenant states she did not get Notice of this hearing as when she went to collect the registered mail from the post office it had been returned to the landlord. The tenant agrees that the rent has not been paid for February, March and April, 2010.

The tenants' representative testifies that she asked the landlord for a rent reduction for the tenant as she is experiencing financial difficulties but the landlord was unwilling to do this as an eviction was proceeding.

Analysis

I have carefully considered all the evidence before me, including the solemnly affirmed evidence of both parties. The tenant argues that she did not receive Notice of this hearing, and argues that when she went to collect the registered mail it had already been returned to the landlord. However, the landlord has provided documentary evidence that the hearing package was sent to the tenant by registered mail on February 19, 2009. This package was returned to the landlord in March, 2010 giving the tenant ample time to collect the hearing package.

The tenant argues that she did not receive the One Month Notice to End Tenancy and therefore could not dispute it. I find when a tenant contradicts the landlords' testimony the burden for proving service of this Notice falls on the landlord. In this instance the site manager attended the hearing and gave sworn testimony that the One Month Notice to End Tenancy was posted by

him through the tenants' mail slot on January 04, 2010 at approximately 10.00 am. According to the Residential Tenancy Branch Rules of Procedure 3.3; I accept that the tenant was served with a One Month Notice to End Tenancy for cause on January 04, 2010. As this Notice was put through the tenants mail slot it is deemed to have been received by the tenant three days after it was left. Consequently, I find the tenant is deemed to have received this Notice on January 07, 2010.

The tenant does not dispute that she has been late with her rent and does not dispute that she owes rent for February, March and April, 2010.

The Notice states that the tenant had 10 days to apply for Dispute Resolution to dispute the notice or the tenancy would end on February 28, 2010. The tenant did not apply to dispute the Notice to End Tenancy within 10 days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 47(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I find in favor of the landlords' application and uphold the One Month Notice to End Tenancy issued on January 04, 2010.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 07, 2010.

Dispute Resolution Officer