



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking an order of possession based on cause and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note the Tenant testified he had submitted evidence by facsimile, over the past day or two. This evidence had not yet reached the file as it was submitted late, and therefore, it was not considered. However, I allowed the Tenant's to present oral evidence on this issue.

Issues(s) to be Decided

Is the Landlord entitled to an order of possession for the site and to recover the filing fee for the Application?

Background and Evidence

In March of 2010, the Landlord wrote to the Tenant with a "Final Warning Letter" regarding repeated late payment of rent. The Landlord explained to the Tenant in this letter that he had been late paying rent for October and December of 2009, and in January and February of 2010.

The letter warns the Tenant that one more instance of late payment of rent will result in the Landlord issuing a Notice to End Tenancy.

The rent for the rental site is due on the 15th day of each month. The Landlord provided evidence in the form of receipts that the Tenant had paid the October 2009 rent on October 26, and the December rent on December 29, of 2009. The Landlord also provided receipts for January and February of 2010, indicating the Tenant had paid all of the January rent on February 24, and the February rent on the same date, February 24, 2010.

In April of 2010, the Tenant paid his rent late once again and the Landlord served the Tenant a one month Notice to End Tenancy by posting on the door on April 17, 2010. The one month Notice to End Tenancy had an indicated vacancy date of May 21, 2010, which corrects under the Act to May 31, 2010.

In his testimony the Tenant admitted he had been late paying rent four times in the past few months. He testified that he was normally only late by four or five days.

The Tenant also testified that his pay period did not align with his rent payment dates. He explained he would always notify the Landlord when his rent would be late in being paid. He explained he did not pay the January rent on time because he forgot about the rent increase he received for the site, but included this in his February payment.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached the Act and tenancy agreement by being repeatedly late with rent. I find the Notice to End Tenancy is valid and enforceable.

The policy guideline to the Act sets out that three instances of being late are sufficient to find the Tenant has been repeatedly late paying rent.

Most importantly, I find the Tenant is conclusively presumed under the law to have accepted the tenancy ended on the effective date of the Notice as he did not file an Application to dispute the Notice.

The Notice indicated to the Tenant that he had a right to dispute the Notice to End Tenancy by filing an Application for Dispute Resolution within 10 days of receipt of the Notice. The Notice also indicates to the Tenant that if he does not file to dispute the Notice, then he is conclusively presumed under section 40(5) to have accepted that the tenancy ended on the effective date of the notice.

Therefore, I find that the Landlord is entitled to an order of possession. The Landlord requested that the order be effective at **1:00 p.m. on September 15, 2010**, and I grant and issue the order in those terms.

I also grant and issue the Landlord a monetary order for the \$50.00 filing fee for the Application. This order may be enforced in the Provincial Court.

Conclusion

The Tenant did not apply to dispute the Notice to End Tenancy and has been repeatedly late paying rent. I grant the Landlord an order of possession and a monetary order for the filing fee for the Application.

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: August 23, 2010.

Dispute Resolution Officer