



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPL FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for landlord's use of the property and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 23, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on December 28, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord's Agent (Agent) appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Did the Landlord serve the Tenant with a 2 Month Notice to End Tenancy in accordance with the *Residential Tenancy Act*?
2. If so, has the Tenant made application to dispute the notice?

Background and Evidence

The Agent referred to the documentary evidence which included, among other things, a copy of a 2 Month Notice to End Tenancy dated November 12, 2010; Canada Post receipts for registered mail sent to the Tenant November 15, 2010, and a copy of the original tenancy agreement which indicates the parties entered into a written fixed term tenancy agreement effective September 1, 2006 which switched to a month to month tenancy after August 31, 2007. The initial rent was payable on the first of each month in the amount of \$1,175.00. The Agent believes that over time the rent was increased to approximately \$1,200.00 per month. The tenancy agreement indicates a security deposit of \$587.50 was paid on August 28, 2006.

The Agent requested an Order of Possession effective August 31, 2011, in accordance with the "uncontested" 2 Month Notice which was served to the Tenant via registered mail on November 15, 2010.

Analysis

Upon review of the 2 Month Notice to End Tenancy dated November 12, 2010, I find the Notice to be completed in accordance with the requirements of section 49 of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

The Tenant failed to make application to dispute this Notice within 15 days of receiving it; therefore the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 49(9) of the *Act*. Based on the aforementioned I approve the Landlord's request for an Order of Possession effective January 31, 2011.

The Landlord has been successful with his application; therefore I award recovery of the \$50.00 filing fee. The Landlord may withhold the \$50.00 from the Tenant's security deposit currently held in trust. The balance of the security deposit must be disbursed in accordance with section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective **January 31, 2011 at 1:00 p.m.** This Order must be served on the Tenant and may be filed in 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: January 19, 2011.

Residential Tenancy Branch