

Decision

Dispute Codes: OPC, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated December 2, 2010 and purporting to be effective January 2, 2011.

Despite being served in person on February 1, 2011, neither tenant appeared at the hearing.

Issue(s) to be Decided

The issue to be determined on the landlord's application, based on the testimony and the evidence was whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause.

Background and Evidence Notice to End Tenancy

The landlord testified that the tenancy had originally started on April 30, 2010 at which time the tenant paid a security deposit of \$350.00. The landlord testified that the rent was due on the first day of each month and the tenant had repeatedly paid rent late. The landlord testified that a One-Month Notice to End Tenancy for Cause was issued to the tenant and was served on December 2, 2010. The landlord testified that the tenant paid rent for February and was advised that the funds were being accepted for use and occupancy only and that the tenancy was not being reinstated. The landlord stated that the tenant had not filed an application to dispute the Notice. The landlord is seeking an order of possession effective February 28, 2011.

Analysis

Under section 47 (1) (d) (ii) of the Act, a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this instance, the effective date was stated as February 6, 2010. However, under section 47(2), I find that the effective date for the notice must be amended to comply with the Act and will be changed to February 28, 2010

The Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

In this instance, the tenant would have to file an application to dispute the December 2, 2010 notice by December 12, 2010. I find that the tenant did not make any application to dispute the One-Month Notice. Therefore I find that under the Act an Order of Possession must be issued in favour of the landlord based on the One-Month Notice.

Conclusion

I hereby grant the landlord an Order of Possession effective February 28, 2011. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that this amount may be retained from the tenant's security deposit of \$350.00, leaving a balance of \$300.00 still held on behalf of the tenant. The remaining deposit must be administered in compliance with section 38 of the Act.

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: February 2011.

Residential Tenancy Branch