



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?
Is the landlord entitled to an order of possession?

Background and Evidence

The facts were not in dispute. The tenant is obligated to pay rent on the first day of each month. The landlord gives tenants a 5 day grace period in which to pay rent before issuing a notice to end tenancy. Since January 2010, the tenant has paid rent late on 10 occasions. 5 of those occasions were outside the 5 day grace period.

Analysis

Residential Tenancy Policy Guideline #38 provides that 3 late payments of rent provide sufficient grounds to end the tenancy. I find that the tenant has paid rent late more than three times over the past year and accordingly I find that the landlord has proven that there are grounds to end the tenancy. I dismiss the tenant's claim to set aside the notice.

I find that the landlord is entitled to an order of possession. At the hearing the landlord indicated that although the notice is effective on March 31, he is willing to extend the tenancy for an additional month. I grant the landlord an order of possession effective April 30, 2011. The tenant must be served with the order. Should the tenant fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

The landlord also seeks to recover the filing fee paid to bring his application. Under section 55 of the Act, the landlord could have orally requested an order of possession under the tenant's application. I therefore find that the landlord's application was unnecessary and dismiss the claim for recovery of the filing fee.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession.

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: March 10, 2011

Residential Tenancy Branch