



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated July 7, 2011 and effective July 18, 2011 which was served in person to the tenant by posting it on the door on July 18, 2011..

Despite being served by registered mail sent on August 24, 2011, the respondent did not appear.

Issue(s) to be Decided

The landlord was seeking an Order of Possession and the issue to be determined is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Background and Evidence

The landlord submitted into evidence proof of service of the Notice of Hearing, a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated July 7, 2011.

The landlord testified that the tenant failed to pay rent owed for May, June and July 2011 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the tenant did not pay the arrears within 5 days and did not vacate the unit. The landlord is seeking an order of possession.

Analysis

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. The reasons for the tenant's failure to do so would not be a material consideration in whether or not an Order of Possession was warranted pursuant to a Ten-Day Notice to End Tenancy for Unpaid Rent, except when the tenant has a right to withhold rent under the Act.

In this instance, the tenant had fallen into arrears by failing to pay the rent when it was due. Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. However, the Act provides that, within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. If a tenant who has received a Ten-Day Notice to End Tenancy for Unpaid Rent does not pay the rent or make an application for dispute resolution then 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 by that date.

I find that that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent and did not pay the rent within 5 days nor did the tenant dispute the Notice.

Based on the above facts I find that the landlord is entitled to an Order of Possession under the Act.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service upon 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: September 23, 2011.

Residential Tenancy Branch