



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MNR, MNDC, FF

Introduction

This hearing dealt with an Application by the Landlord for an order of possession, a monetary order for unpaid rent, compensation for damage or loss, and to recover the filing fee.

The Landlord provided affirmed testimony that she served the Tenant by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 21, 2011. The Landlord provided a copy of the receipt and tracking information of the registered mail as proof of service. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Landlord indicated several matters of dispute on her application and confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. The Landlord requested to withdraw her claim for unpaid rent and compensation for damage and loss at this time and has requested liberty to reapply at a later date for these monetary claims should she choose to do so. I find it appropriate to grant the Landlord's request.

Therefore, I will deal only with the Landlord's request for an order of possession and I dismiss the balance of the Landlord's claim with liberty to re-apply.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession, and the filing fee?

Background and Evidence

The Landlord and Tenant have a tenancy agreement which commenced on July 15, 2011. The Landlord testified that the rent is \$975.00 per month, due on the first of the month. The Landlord confirmed that she holds a security deposit of \$487.50 which the Tenant paid when he moved into the rental unit.

The Landlord stated that she had initially given the Tenant a letter advising him that she was ending the Tenancy due to complaints about the Tenant from the Strata including the Landlord being informed by the president of the strata at the end of August that the Tenant had been arrested by the police and there were search warrants done. The Landlord confirmed with the Tenant that he was arrested for firearms possession, and the Landlord had verbal confirmation from the police that the Tenant is "known to the police". The Landlord states that she did not use the correct Notice form from Residential Tenancy to end the Tenancy for Cause and has not pursued that.

The Landlord stated that the Tenant did not pay rent for September or October 2011. The Landlord stated that she served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent in person outside the rental unit on October 03, 2011 with a witness present. The Landlord provided a copy of the 10 Day Notice to End Tenancy and a statement from the individual who witnessed the service of the Notice on the Tenant. The Landlord states that the Tenant initially responded to her by stating that he would move out by mid October. The Landlord advised the Tenant that she wanted him to make final payment of the balance of rent owed and leave the keys with the neighbour as she was going to be away in mid October. The Landlord states that when she returned she found that the Tenant had not left the keys or rent with the neighbour, and she went to the rental unit on October 19th. At the rental unit she discovered the Tenant was still living there and had not moved his belongings. The Landlord stated that the Tenant told her that she could not come into the rental unit and that if she wanted him out she would have to go to arbitration. On October 21, 2011 the Landlord applied for dispute resolution.

The Notice to End Tenancy issued by the Landlord on October 03, 2011 informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Notice stated that the Tenant had until October 13, 2011 to move out of the rental unit. The Tenant is still in the rental unit and has not moved out, has not paid rent and has not filed an application for dispute resolution.

The Landlord is seeking an order of possession plus the filing fee for this Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The evidence of the Landlord confirmed that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on October 03, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally delivered to the Tenant, it was deemed to have been served on October 03, 2011(the same day). The Notice states that the Tenant had five

days to pay the full amount of the outstanding rent or the tenancy would end from the service date. The Tenant did not pay the outstanding rent within five days from the date of service. The deadline to do so was October 08, 2011. The Landlord correctly indicated that the Tenant had until October 13, 2011 to vacate the premises, as this is ten days from the deemed service date, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days of service of the Notice and the Tenant did not move out.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on October 13, 2011, which is ten days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession for the rental unit effective 2 days from the date of service of the order on the Tenant.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding, and I order that the Landlord may deduct this amount from the security deposit which they hold. The balance of the security deposit must be dealt with in accordance with the Act.

Conclusion

The Landlord's other disputes, unpaid rent and compensation for damage or loss, as set out on their Application are dismissed with liberty to reapply.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

I order that the Landlord may deduct \$50.00 from the security deposit. The balance of the security deposit must be dealt with in accordance with the Act.

The order accompanies the Landlord's copy of this decision.

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: November 15, 2011.

Residential Tenancy Branch