



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC

Introduction

This hearing was convened by way of conference call in repose to the landlords' application for an Order of Possession for unpaid rent and an Order of Possession for cause.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 06, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

With regard to the landlords application for an Order of Possession based on the 10 Day Notice to End Tenancy; I have reviewed the documentation provided by the landlord for this application. As part of the application the landlord is required to provide

a copy of the two page 10 Day Notice to End Tenancy Due to Unpaid Rent or Utilities. Page two of the notice provides information to the tenant about the reasons given for the Notice and the steps they can take to respond to the Notice.

In the documents before me the landlord has not provided page two of the notice to end tenancy. The landlord confirms that he did not realize this was a two page document. In order for a legal notice to be valid and enforceable it must be complete. As a result I find that the landlord's application must be dismissed and the hearing will proceed with the landlords' application based on the One Month Notice to End Tenancy which is complete.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for cause?

Background and Evidence

The landlord (DV) testifies that the tenant is his brother who rented the cabin at the back of the main house sometime around 2009. The landlord testifies that his brother was looking after their mothers affairs and originally he was supposed to take care of the property and fix the cabin up in lieu of rent. The landlord testifies that his brother did do some work on the cabin but did not fulfill the rest of his obligations in order to get free rent.

The landlord states his brother was then required to pay rent for his tenancy in the cabin from July, 2011 and agreed he would no longer be responsible for the maintenance of the property. The landlord states his brother failed to pay rent and has caused damage to the landlord's property. The tenant failed to maintain the yard; gray water flooded the roots of a tree which damaged the roots causing the tree to fall over. The landlord testifies the tenant also cut down some fruit trees and nut trees on the property without permission.

The landlord testifies the tenant has caused a disturbance to the other tenants living in the main house and has harassed and shouted at them. The landlord also states the tenant has prevented the landlords' real estate agent from showing the house and has issued threats against the real estate agent. The landlord states in light of the tenants actions they served the tenant with a One Month Notice to End Tenancy on August 09, 2011 by posting the Notice to the tenant's door. This Notice has an effective date of October 01, 2011 and gave the following five reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *The tenant or a person permitted on the residential property by the tenant has;*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- 3) *The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has;*
 - (i) *Adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,*
- 4) *The tenant has caused extraordinary damage to the unit/site or property*
- 5) *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The landlord states as the tenant has not disputed the One Month Notice to End Tenancy the tenant has therefore accepted that the tenancy must end but still refuses to move from the rental unit. The landlord therefore seeks an Order of Possession to take effect as soon as possible.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenant on August 09, 2011. The landlord filed two applications previously for an Order of Possession and was given leave to reapply as his first two applications were unsuccessful. In this application the landlord has provided the correct information and the tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act* and the landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on 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: December 22, 2011.

Residential Tenancy Branch