



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession because the tenant has breached an agreement with the landlord and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail and served in person on December 05, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. As I have evidence before me concerning the registered mail receipts, the tenant is deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present his 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.

Issue(s) to be Decided

- Has the tenant breached an agreement with the landlord?
- If so is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord has provided a copy of the tenancy agreement between the parties which was signed on September 01, 2011. This agreement states that this is a fixed term tenancy which was due to expire on November 30, 2011 at Noon. The agreement also states that at the end of the fixed term the tenant must give up vacant possession of the rental unit.

The landlord's agent testifies the tenant was also sent a letter which was hand delivered to the tenant on October 29, 2011 which informed the tenant that the landlord would not renew the current lease agreement. The landlord's agent has provided a copy of this letter in evidence. This letter informs the tenant that the landlord gives the tenant formal notice to vacate the unit by November 30, 2011.

The landlord's agent has provided a copy of a previous hearing held on November 10, 2011 which was held in response to the tenant's application for Dispute Resolution to dispute a Notice to End Tenancy for cause. At that hearing the tenant withdrew his application as he stated his intention to move from the rental unit by November 30, 2011.

The landlord's agent testifies that the tenant has failed to move from the rental unit as agreed on November 30, 2011 and the landlord seeks an Order of Possession for breach of the agreement.

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 y considered the landlords documentary evidence and affirmed testimony of the landlords agent.

When a tenant enters into a tenancy agreement which is a fixed term agreement without an option for renewal the tenant must move from the rental unit on the date agreed upon in the tenancy agreement.

In this case the tenant agreed to move from the rental unit on November 30, 2011. The tenant confirmed his intention to move out by this date at a previous Dispute Resolution hearing. The tenant has now failed to move from the rental unit as agreed and the landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act* based on a breach of the tenancy agreement.

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.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application pursuant to s. 72(1) of the *Act*. I order that the landlord retain this amount from the security deposit of \$400.00 leaving a balance \$350.00 which must be returned to the tenant or otherwise dealt with 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: December 23, 2011.

Residential Tenancy Branch