

DECISION

Dispute Codes: OPR; FF

Introduction

This is the Landlord's application for an Order of Possession; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that he personally served the Tenant with the Notice of Hearing documents at the rental unit on October 20, 2011. Based on the affirmed testimony of the Landlord, I am satisfied that the Tenant was duly served with the Notice of Hearing documents pursuant to the provisions of Section 89(1)(a) of the Act. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that he served the Tenant with the Notice to End Tenancy for Unpaid Rent on October 3, 2011, by posting the document to the door at the rental unit. The Landlord testified that the Tenant did not pay the outstanding rent.

The Landlord testified that the Tenant moved out of the rental unit on November 5, 2011, without paying any rent for November, and leaving a mess at the rental unit. The Landlord withdrew his application for an Order of Possession because he has taken back possession of the rental unit. The Landlord asked to recover the filing fee from the Tenant and stated that he was holding a security deposit in the amount of \$350.00 which had been paid in May, 2011.

Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on October 3, 2010. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay the arrears, or move out of the rental unit on the effective date of the end of tenancy. The Tenant moved out of the rental unit

after being served with the Notice of Hearing documents. I find that the Landlord's application had merit when it was filed (the Tenant still remained in the rental unit) and that he is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply \$50.00 of the security deposit in recovery of the filing fee. I explained to the Landlord that the remainder of the security deposit must be applied in accordance with the provisions of Sections 38 and 39 of the Act.

Conclusion

The Landlord withdrew his application for an Order of Possession as the Tenant has moved and the Landlord has taken possession of the rental unit.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply \$50.00 of the security deposit in recovery of the filing fee. The remainder of the security deposit must be applied in accordance with the provisions of Sections 38 and 39 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: November 09, 2011.

Residential Tenancy Branch