



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession.

The Landlord provided affirmed testimony that he served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on December 20, 2011, and provided the customer receipt/tracking slip from Canada Post as evidence. 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.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on December 01, 2006 and the current rent is \$611.00. A security deposit of \$295.00 was paid.

The Landlord testified that he had previously tried to evict the Tenant and was granted a prior order of possession on April 28, 2011, however, he stated that he was unable to serve the Tenant and follow through on the eviction at that time as the Tenant was incarcerated for several months. The Landlord stated that the Tenant was released from his incarceration he returned to the rental unit. The Landlord stated that the Tenant has continued to unreasonably disturb other occupants and the Landlord resulting in calls to the police, as a result the Landlord has served a One Month Notice

to End Tenancy. The Landlord has subsequently made this new Application for an order of possession.

The Landlord stated that he served the Tenant with the One Month Notice to End Tenancy for Cause by posting it on the door of the rental unit on October 25, 2011 with a witness present.

The Landlord stated that the Tenant did not move out of the rental unit by November 30, 2011 as indicated by the Notice. The Landlord filed an Application for Dispute Resolution on December 16, 2011 and received a Notice of Hearing package on December 20, 2011.

The Landlord testified that as of the date of the hearing the Tenant was still in the rental unit. The Landlord is requesting an order of possession.

Analysis

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

I accept the Landlord's evidence that he served the Tenant with the One Month Notice to End Tenancy for Cause on October 25, 2011 by posting it on the door of the rental unit in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was posted on the door of the rental unit, it was deemed served by October 28, 2011 (within three days of the date posted). The Notice states that the Tenant had ten days to apply for Dispute Resolution, or the tenancy would end on November 30, 2011. The Tenant did not apply to dispute the Notice to End Tenancy within ten days from the date of service. The deadline to do so was November 07, 2011.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on November 30, 2011, which is more than 30 days after the deemed service date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

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: January 09, 2012.

Residential Tenancy Branch