



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for cause. The tenant did not appear at the hearing. The landlord testified that the landlord gave the hearing documents to the tenant by sliding them under the rental unit door when she was home and in the presence of a witness on February 27, 2012. The landlord explained that he had tried to serve the tenant twice and when he observed the tenant come home on February 27, 2011 he knocked on her door but she would not answer the door so he slid the documents under the door.

Section 89(2) for ways a party may serve an Application for Dispute Resolution that pertains to an Order of Possession. Section 89(2) permits a landlord to attach hearing documents for an Order of Possession on the door or another conspicuous place at the rental unit. In this case, the landlord did not post the hearing documents; however, I was satisfied the tenant was just as likely to have received the hearing documents under the door as posting them to the door. Therefore, pursuant to the authority afforded me under section 71 of the Act, I deemed the tenant sufficiently served for purposes of the Act and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. What is the effective date of the Order of Possession?

Background and Evidence

The landlord testified to the following information: The tenancy commenced October 29, 2011 and the tenant is required to pay rent of \$680.00 on the last day of every month. The tenant paid a \$340.00 security deposit. On January 31, 2012 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the door of the rental unit. The Notice has a stated effective date of February 29, 2012. The landlord has received rent from the government on behalf of the tenant for the months of

February and March 2012. The tenant did not apply to dispute the Notice; however, the tenant's boyfriend, who lives with the tenant, informed the landlord that they will not be moving until the bailiff comes to remove them from the rental unit. The landlord proceeded to make this application seeking an Order of Possession.

The landlord provided a copy of the Notice generated using a computer and a photograph of the Notice posted on the tenant's door. The photograph of the Notice posted on the door includes a date and signature of the landlord. The landlord affirmed that both pages of the Notice were posted on the door.

Analysis

Where a tenant receives a 1 Month Notice to End Tenancy in the approved form, the tenant has 10 days to make an application to dispute the Notice. If the tenant does not dispute the Notice within 10 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice.

Upon consideration of the undisputed evidence before me, I am satisfied the landlord served the tenant with both pages of a 1 Month Notice by posting it on the door January 31, 2012. Since the Notice was posted it is deemed to be received by the tenant three days later under section 90 of the Act. Accordingly, the Notice is deemed to be received by the tenant on February 3, 2012 and the stated effective date of February 29, 2012 is non-compliant with the requirements of the Act.

Where a stated effective date does not comply with the requirements of the Act, section 53 of the Act provides that the effective date automatically changes to comply. Since I heard the rent is due on the last day of every month and the tenant received the Notice on February 3, 2012, the effective date should read March 30, 2012.

Since the tenant did not dispute the Notice, I find the tenancy ends March 30, 2012. I provide the landlord an Order of Possession effective at 1:00 p.m. on March 30, 2012. I further find the landlord was entitled to receive rent for March 2012 since the tenancy continues until March 30, 2012.

I am further satisfied the landlord made this application due to concerns the tenant and/or her occupant would not vacate the unit without an Order of Possession. Therefore, I award the filing fee to the landlord and authorize him to deduct \$50.00 from the tenant's security deposit.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on March 30, 2012 to serve upon the tenant. The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application.

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: March 13, 2012.

Residential Tenancy Branch