



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing was convened on the landlord's application of May 9, 2012 for an Order of Possession pursuant to a Notice to End Tenancy for unpaid, served on March 2, 2012.

Despite having been served with the Notice of Hearing, in person to the tenants and by registered mail to the occupants, none of the respondents called in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and, if so, on what effective date?

Background and Evidence

This tenancy began on April 1, 2012 under a written agreement between the landlord and the two parties named as tenants. Rent is \$1,100 per month and the landlord holds a security deposit of \$550.

During the hearing, the landlord gave evidence that she had served the named tenants with a Notice to End Tenancy for unpaid rent on March 2, 2012, citing accumulated rent arrears of \$4,975.

The landlord stated that the tenants had moved on March 31, 2012, but had left four occupants remaining in the rental unit. When advised that occupants have no rights under the *Residential Tenancy Act* and may be removed for trespass, the landlord stated that police had been reluctant to do so due to the length of time the occupants had been in the rental building.

She stated that the remaining occupants have paid her no rent and have refused to vacate the rental unit.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was March 12, 2012.

Even though the tenants vacated the rental unit themselves, they have failed to provide the landlord with vacant possession implicit in a Notice to End Tenancy and as is commonly stated in an Order of Possession with the phrase, "and all other occupants".

In the present matter, I find that the parties remaining in the rental unit have no contractual agreement with the landlord. While they may have an agreement with the tenants, I find they have no standing under the *Act*.

Therefore, even though the tenants have moved, I find that the landlord is entitled to an Order of Possession to take effect two days from service and the Order is effective against the tenants and all other occupants.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession to take effect two days from service and applicable to the tenants and all other occupants including those named.

I find that the occupants have no entitlement with respect to the rental agreement between the landlord and the named tenants, and the Act does not interfere with the landlord's rights in trespass.

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: May 31, 2012.

Residential Tenancy Branch