



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a Notice to End Tenancy for cause, to keep the security deposit and an order to recover the filing fee for the Application.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on May 19, 2012, the Tenant did not appear. Registered mail is deemed served five days after mailing under the Act, whether or not the Tenant accepts or picks up the registered mail. I find the Tenant has been duly served in accordance with the Act.

The Landlord had applied to keep the security deposit for damage to, and cleaning of, the rental unit. It was explained to the Landlord this claim was premature, since the Tenant has until the end of the tenancy to repair any damages and to clean the rental unit. Therefore, the Landlord's claim to keep the security deposit is dismissed with leave to reapply.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

Background and Evidence

Based on the affirmed testimony of the Landlord, I find that the Tenant was personally served with a one month Notice to End Tenancy for cause, on April 18, 2012. The effective date of the Notice was May 31, 2012.

The Notice informed the Tenant that the Tenant had 10 days to dispute the Notice, or the Tenant must move out on the effective date of the Notice. There is no evidence before me that the Tenant filed an Application to dispute the Notice within 10 days, or that the Tenant has vacated the rental unit.

Analysis

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

The Tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, that is, May 31, 2012. However, the Tenant has not vacated the rental unit, which is a breach of the Act.

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

I order that the Landlord may retain \$50.00 from the security deposit held in order to recover the filing fee for the Application.

This decision is final and binding on the parties, except as otherwise provided under the Act and 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: June 07, 2012.

Residential Tenancy Branch