



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession pursuant to a mutual agreement to end tenancy and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in two different manners. They were initially sent via registered mail on June 16, 2012. Mail receipt numbers were provided in the Landlord's evidence. The Landlord advised that the registered mail package was returned to him unclaimed. The second service was done in person, from the Landlord to the Tenant on June 16, 2012.

Based on the aforementioned I find the Tenant was sufficiently served notice of this proceeding and I proceeded in his absence.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord submitted copies of the following documents into evidence: Canada post receipts; the mutual agreement to end tenancy signed by both parties on June 11, 2012; a letter from the Landlord's agent confirming the signing of the mutual agreement to end the tenancy; and the tenancy agreement.

The Landlord advised that shortly after the Tenant occupied the rental unit on May 1, 2012 they started getting complaints from other tenants. After receiving numerous e-mails and letters of complaints the Landlord and his Agent negotiated a mutual agreement to end this tenancy with the Tenant effective July 31, 2012.

Since signing the mutual agreement the Tenant has made contradictory statements to the Landlord's Agent indicating that he may not vacate the rental unit in accordance with

the mutual agreement. As a result the Landlord thought it best that he seek an order of possession to ensure he regains possession of the unit.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence.

Upon review of the Mutual Agreement to End Tenancy I accept that on June 11, 2012 the Tenant and the Landlord signed the mutual agreement to end the tenancy effective July 31, 2012 at 1:00 p.m.

Section 55(2)(d) stipulates that a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy is ended.

Residential Tenancy Policy Guideline # 11 provides that an agreement or notice to end tenancy cannot be unilaterally withdrawn which means once the parties mutually agree to end the tenancy in writing, the only way to continue the tenancy is if both parties mutually agree to reinstate the tenancy.

In this case the Tenant has informed the Landlord he will not be vacating the unit however the Landlord has not agreed to re-instate this tenancy.

Based on the foregoing I hereby approve the Landlord's request for an Order of Possession and recovery of the **\$50.00** filing fee.

Conclusion

The Landlord has been awarded an Order of Possession effective **July 31, 2012, at 1:00 p.m.** This Order is legally binding and must be served upon the Tenant.

The Landlord may withhold the one time award of **\$50.00** from the security deposit currently held in trust, as full recovery of the filing fee.

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: July 10, 2012.

Residential Tenancy Branch