



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This matter dealt with an application by the Landlord for An Order of Possession and to recover the filing fee for this proceeding.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 19, 2012. Based on the evidence of the Landlord's agent, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on December 1, 2011 as a fixed term tenancy to May 31, 2012 and then renewed on a month to month tenancy basis. Rent is \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 on December 1, 2011. The Landlord's agent said he does not know if the Tenant is living in the rental unit, but he is requesting an Order of Possession with an effective date for as soon as possible.

The Landlord's agent said they issued a 1 Month Notice to End Tenancy for Cause dated December 16, 2011 on December 16, 2011 by posting it on the Tenant's door. The Landlord's agent said they did not apply for an order of possession at that time because they made arrangements with the Tenant to correct his behaviour. The Landlord's agent continued to say they have collected rent from January, 2012 to July, 2012 and they issued rent receipts for "Use and Occupancy only." The Landlord's agent said they did not include any of these receipts in the evidence package as he did not think they would be required.

The Landlord's agent said that he is not sure who is living in the unit and he requested an Order of Possession for as soon as possible if his application is successful.

Analysis

In order for an application to End a Tenancy for Cause to be successful the Landlord must prove that the cause on the Notice to End Tenancy is legitimate, that the tenancy agreement has been violated and the tenancy has not been re-instated. The Landlord said the Tenant continued to live in the rental unit from January, 2012 to July, 2012 and the Tenant continued to pay rent each month according to the tenancy agreement. This continued for the full term of the fixed term of the tenancy agreement which ending in May, 2012 and then renewing on a month to month tenancy basis after May, 2012. The Landlord said they issued rent receipts for "Use and Occupancy Only" to show that they did not re-instate the tenancy, but the Landlord did not provide a copy of these receipts in the evidence package. Consequently as the Landlord accepted rent for 7 months after issuing the Notice to End Tenancy, I find the Landlord re-instated the tenancy and in the absences of any evidence to the contrary the 1 Month Notice to End Tenancy for Cause dated December 16, 2011 is void as a result of the tenancy being re-instated well after the effective vacancy date on the Notice to End Tenancy dated December 16, 2011.

The Landlord is at leave to issue a new Notice to End Tenancy if any terms of the tenancy agreement are violated.

The Landlord's application is dismissed without leave to reapply and the Landlord is ordered to bear the cost of the filing fee of \$50.00 which they have already paid.

Conclusion

The Landlord's application is dismissed without leave to reapply.

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*.

Dispute Resolution Officer