



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent. At the outset of the hearing the landlord's agent withdrew their application to recover the filing fee from the tenants.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail and was also hand delivered on July 26, 2012. Mail receipt numbers were provided in the landlord's documentary evidence.

The landlord's agent appeared; the line remained open for 10 minutes for the tenants to dial into the conference call. The tenants did not dial in to the call within 10 minutes and the hearing proceeded in the tenants' absence. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

This month to month tenancy started on January 19, 2012. Rent for this unit is \$1,050.00 per month and is due on the first day of each month in advance.

The landlord's agent testifies that the tenants failed to pay rent for July, 2012 on the day it was due. The landlord issued a 10 Day Notice to the tenants on July 04, 2012 by posting the Notice to the tenant's door. The Notice states the tenant has five days to either pay the rent or dispute the Notice or the tenancy will end on July 14, 2012. The landlord's agent states the tenants paid 1,050.00 on July 16, 2012 and this was accepted for use and occupancy only. The landlord has provided a copy of the receipt which states this and informs the tenants that the landlord is not reinstating the tenancy.

The landlord's agent states that on July 26, 2012 one of the tenants signed an agreement to end the tenancy on August 01, 2012. The tenants failed to vacate the rental unit on that date and the landlord seeks an Order of Possession effective two days after service.

Analysis

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted to the tenant's door on July 04, 2012 it was deemed served three days later on July 07, 2012. Therefore I have amended the date of the Notice to July 17, 2012 pursuant to s. 53 of the *Act*. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days. The tenants did pay the rent by July 12, 2012 but did pay \$1,050.00 on July 16, 2012 which was accepted for use and occupancy only and did not reinstate the tenancy.

I further find the tenants signed an agreement to end the tenancy effective on August 01, 2012 and failed to abide by that agreement.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice and this date was extended by the landlord in the agreement to end the tenancy on August 01, 2012. I therefore find the landlord has established their claim for an order of possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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: August 13, 2012.

Residential Tenancy Branch