



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, an Order of Possession for cause, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that he personally served the Tenant with the notice of hearing documents on August 7, 2012 at 2:55 p.m. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act, and I continued in the Tenant's absence.

Issue(s) to be Decided

1. Should the Landlord be granted Orders of Possession?

Background and Evidence

The Landlord advised the parties entered into a verbal tenancy agreement that began on December 1, 2007. Rent is payable on the first of each month in the amount of \$395.00. The Tenant had originally paid a security deposit however the Landlord was granted an order to retain the deposit approximately two years ago when an Order of Possession was granted. The Landlord subsequently agreed to reinstate the tenancy and did not collect another security deposit.

The Landlord submitted 8 pages of documents and photos into evidence which included, among other things, a copy of a 1 Month Notice to end tenancy for cause issued October 5, 2011.

The Landlord stated that the 1 Month Notice to end tenancy was served to the tenant by posting it on the rental unit on October 5, 2011. He confirmed that there has not been a 10 Day Notice issued or served upon the Tenant since the previous order of possession was granted a few years back.

The Landlord advised that the Tenant's rent has been paid directly to him from Income Assistance and that he signed the intent to rent form back in December 2007. He

asserted that although he has collected money from Income Assistance after the effective date of the 1 Month Notice and up to March 2012 he has not reinstated the tenancy because he accepted the money for use and occupancy only. He stated that he did this to assist the Tenant who kept begging for more time to find alternate accommodation. He referenced his photos and indicated that he could not allow this hording situation to continue and he was seeking an order of possession.

The Landlord acknowledged that he was not seeking monetary compensation and that he was the one who informed Income Assistance in March 2012 that he would not take any more money for the Tenant to occupy the rental unit.

Analysis

The Landlord has confirmed that he did not issue a 10 Day Notice to end tenancy for unpaid rent. Accordingly, I dismiss the Landlord's request for an Order of Possession for unpaid rent.

The evidence supports the Landlord issued a 1 Month Notice to end tenancy for cause on October 5, 2011. The Landlord continued to accept monthly payments from Income Assistance until March 2012. He alleged that these payments were accepted for use and occupancy only however there is no evidence before to support this allegation.

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from or on behalf of a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

In these circumstances the Landlord was able to accept rent for the period up to November 30, 2011 without waiving the 1 Month Notice to End Tenancy. The evidence supports the Landlord continued to accept payment for four months after the effective date of the notice and that in March 2012 he informed the Ministry of Social Development that he would no longer be accepting payments. The Landlord then waited an additional five months before applying for dispute resolution to seek an Order of Possession.

Based on the foregoing I find the Landlord's actions waived the 1 Month Notice to end tenancy and the tenancy was reinstated. Accordingly, I dismiss the Landlord's application for an Order of Possession for cause.

The Landlord has not been successful with his application; therefore he must bear the burden of the cost to bring his application forward.

Conclusion

I HEREBY DISMISS the Landlords application in its entirety.

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: September 05, 2012.

Residential Tenancy Branch