



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent pursuant to section 55 of the *Residential Tenancy Act*. This participatory hearing was convened following the landlord's application to obtain an Order of Possession through the Residential Tenancy Branch's direct request process. In a February 8, 2013 decision, the RTB's Arbitrator adjourned the landlord's application for dispute resolution to a participatory hearing. He did so as he was not satisfied that the direct request documents had been served to the tenant.

The tenant did not attend this hearing, although I waited until 1:42 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenant's door at 4:45 p.m. on January 3, 2013. She entered into written evidence a copy of a Proof of Service document signed by the landlord's employee who posted the 10 Day Notice and witnessed by another of the landlord's employees. The landlord testified that she posted a copy of the landlord's dispute resolution hearing package on the tenant's door at 11:30 a.m. on February 27, 2013. I am satisfied that both of these documents were served to the tenant in accordance with the *Act*.

Issues(s) to be Decided

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

Background and Evidence

This one-year fixed term tenancy commenced on February 1, 2012. Monthly rent is set at \$750.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$375.00 security deposit paid on January 11, 2012.

The landlord's 10 Day Notice identified \$750.00 owing as of January 1, 2013. In the landlord's application for dispute resolution and the tenant rent ledger, the landlord

noted that the landlord accepted a \$400.00 payment from the tenant. At the hearing, the landlord testified that the landlord accepted \$400.00 from the tenant on January 22, 2013 and another \$1,000.00 from the tenant on February 1, 2013. She testified that the landlord did not issue receipts to the tenant for either of these payments. She said that \$500.00 in late fees remain owing for this tenancy plus the tenant's March 2013 rent.

Analysis

The tenant failed to pay the January 2013 rent in full within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by January 16, 2013. However, the landlord gave sworn oral testimony and written evidence that the landlord accepted two sizeable payments from the tenant since issuing the 10 Day Notice. The landlord testified that no receipts were issued for either payment and the tenant was not advised that the payments were received for use and occupancy only.

The first of the tenants' payments was made by a debit payment, so it may not have been possible for the landlord to issue a receipt for use and occupancy only. However, I find that the landlord's acceptance of the second payment without issuing a receipt for use and occupancy only is of concern because it was received on the due date for the tenant's February 2013 rent. While the landlord maintained that late fees were still owing at that time, it appears that the tenant believed that the landlord had reinstated her tenancy. By accepting this significant payment on the due date for the rent for February 2013, I find that the landlord reinstated this tenancy. Consequently, I dismiss the landlord's application to obtain an end to this tenancy on the basis of the 10 Day Notice, as I find that the landlord has reinstated this tenancy.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of January 3, 2013, 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*.

Dated: March 07, 2013

Residential Tenancy Branch

