



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated May 12, 2009 and effective May 23, 2009 which was served in person to the tenant on May 12, 2009 at 11:45 a.m.

The applicant participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on February 20, 2013, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord submitted into evidence, a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated February 4, 2013, with effective date of February 14, 2013, proof of service of the Hearing Notice and a copy of the tenant ledger. The tenancy began March 28, 2012. Rent is \$1,570.00 and a security deposit of \$785.00 was paid.

The landlord testified that the tenant fell into rental arrears of \$1,550.00 and was served with a 10-Day Notice to End Tenancy for Unpaid Rent by posting it on the door on February 4, 2013. The landlord testified that the tenant failed to pay all of the outstanding arrears and still owes \$1,290.00.

The landlord testified that the tenant did not vacate the unit, nor dispute the Notice. The landlord is seeking an order of possession.

Analysis

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. The reasons for the tenant's failure to do so would not be a

material consideration in whether or not an Order of Possession was warranted pursuant to a Ten-Day Notice to End Tenancy for Unpaid Rent, except when the tenant has a right to withhold rent under the Act.

In this instance, the tenant had fallen into arrears by failing to pay the rent when it was due. Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or the tenant may choose to dispute the notice by making an application for dispute resolution. If the tenant fails to pay the rent or make an application for dispute resolution, then the tenant is conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ends on the effective date of the notice, and must vacate the unit by that date.

I find that that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent and did not pay the rent within 5 days nor did the tenant dispute the Notice.

Based on the above facts I find that the landlord is entitled to an Order of Possession under the Act.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord is successful in the application and is granted an Order of Possession.

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 13, 2013

Residential Tenancy Branch