



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46.

Service:

The Notice to End Tenancy is dated April 3, to be effective April 15, 2013 and the tenant confirmed it was served personally on April 3, 2013. The tenant's Application for Dispute Resolution is dated April 18, 2013 and the landlord agreed they received it personally on April 19, 2013. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent or has the tenant demonstrated that the notice to end tenancy for unpaid rent should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The landlord submitted that the tenant's application was out of time as it was given more than 5 days after the Notice To End Tenancy.

The undisputed evidence is that the tenancy commenced on Nov. 9, 2012, rent is \$700 and a security deposit of \$350 was paid. The landlord said no rent was paid for April 2013 so the Notice was served.

The tenant said he was in a dispute with the Ministry about his rent and the landlord knew this. He agreed he had not paid April rent and noted that his power was off in his unit. The landlord said that this was not due to the landlord's actions and he presumed

the tenant must not have paid his power bill. The tenant said he still had access to his mail box.

Included with the evidence is a Notice to End Tenancy, a lease and photo proof of service.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Order of Possession

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant did not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy within the requisite five days and when he made application, the time to do so has expired. Moreover, I find that the tenant has unpaid rent as stated in the Notice and he has not paid the rent to date. Whether or not he is disputing with the Ministry, the Act provides that he must pay his rent on time to maintain his tenancy. The tenancy is at an end and the Order of Possession is issued to the landlord effective two days from service.

Conclusion:

I dismiss the application of the tenant. The tenancy is terminated and an Order of Possession is issued to the landlord to be effective two days from service.

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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: May 02, 2013

Residential Tenancy Branch