



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, OPC

Introduction

The hearing was scheduled to deal with a landlord's request for an early end of tenancy and an Order of Possession made on October 9, 2013. The tenant did not appear at the hearing. The landlord testified that the hearing documents, including the landlord's evidence, were sent to the tenant at the rental unit via registered mail on October 10, 2013. The landlord orally provided a registered mail tracking number as proof of service. The landlord submitted that as of today's date the tenant had not yet picked up the registered mail.

Section 90 of the Act deems a person to have received a document five days after mailing so that a party cannot avoid service by refusing to accept or pick up registered mail. I find the tenant is deemed to be served with the landlord's hearing package and I proceed to consider the landlord's Application.

Preliminary Matter – issuance of a 1 Month Notice to End Tenancy for Cause

I noted that the landlord's evidence package included a copy of a 1 Month Notice to End Tenancy for Cause dated August 15, 2013 with a stated effective date of September 30, 2013. Since the tenancy may already be at an end due to the 1 Month Notice, meaning an order for an early end of tenancy is not required, I found it necessary to further enquire as to the status of the 1 Month Notice.

The building manager testified that the 1 Month Notice was posted on the tenant's door on August 15, 2013. The tenant did not file to dispute the 1 Month Notice; however, the tenant has not yet vacated the rental unit. Nor, has the tenant paid rent for September 2013 or October 2013.

The landlord stated that an Order of Possession is required as the tenant has not vacated the rental unit and the health and safety of other tenants is in jeopardy.

Upon review of the landlord's Application for Dispute Resolution I am satisfied the landlord has indicated that the landlord had cause to end the tenancy and that a 1 Month Notice had been issued on August 15, 2013. Therefore, I amend this Application for Dispute Resolution to indicate the dispute code that corresponds to the landlord seeking an Order of Possession based upon a 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

1. Has the tenancy ended pursuant to a 1 Month Notice to End Tenancy for Cause? If not, has the landlord established a basis for ending the tenancy early?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

Pursuant to a written tenancy agreement, this tenancy commenced September 1, 1997. On June 3, 2009 the landlord was provided an Order of Possession based upon a 1 Month Notice to End Tenancy for Cause; however, the tenancy was re-instated.

On August 6, 2013 the health authority issued a letter to the landlord advising of a significant health concern due to storage of garbage on the balcony of the subject rental unit.

On August 15, 2013 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the tenant's door. The Notice has an effective date of September 30, 2013. The tenant did not file to dispute the Notice. The tenant has not paid rent since the Notice was issued but continues to be in possession of the rental unit. The landlord seeks an Order of Possession.

Analysis

A tenant that receives a 1 Month Notice of the Act has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not file to dispute the Notice within 10 days, section 47(5) of the Act provides that the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and must vacate the rental unit by that date.

In this case, I accept the undisputed testimony of the building manager that a 1 Month Notice was posted to the tenant's door on August 15, 2013. Section 90 of the Act deems a document to be served three days after posting.

Since the tenant did not file to dispute the 1 Month Notice by August 28, 2013 I find the tenant conclusively presumed to have accepted that this tenancy would end September 30, 2013.

I am also satisfied that there has been no re-instatement of tenancy since no rent has been paid or collected since August 2013.

In light of the above, I find this tenancy ended on September 30, 2013 based upon an undisputed 1 Month Notice. As the tenancy has already ended, I find it unnecessary to consider the landlord's request for an early end of tenancy.

As the tenancy has ended I find the landlord entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

As the landlord did not request recovery of the filing fee paid for this Application I make no award for such.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

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: October 24, 2013

Residential Tenancy Branch

