



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated July 13, 2012 and purporting to be effective August 31, 2012.

Despite being served by having the Notice of Hearing posted on the tenant's door on October 1, 2013, in front of a witness, the tenant did not appear and the hearing proceeded in the absence of the tenant.

Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause?

Background and Evidence Notice to End Tenancy

A copy of the tenancy agreement shows that the rent is \$1,00.00 per month and that the tenant was required to pay a security deposit of \$500.00.00. The landlord testified that they served a One-Month Notice to End Tenancy for Cause on the tenant on September 14, 2013. The Notice indicated that the landlord was terminating the tenancy on the basis that the tenant failed to pay the security deposit.

A copy of the Notice terminating the tenancy effective October 31, 2013 is in evidence. Also in evidence is proof of service verifying that the tenant was personally served with the One-Month Notice to End Tenancy for Cause at 6:00 p.m. on September 14, 2013.

The landlord acknowledged that the tenant has paid rent for November 2013 by depositing it directly in the landlord's account. The landlord testified that they did not want to accept rent for November as they had no intention of re-instating the tenancy. The landlord testified that they had no control over the deposit, but would prefer to

terminate the tenancy as soon as possible. The landlord testified that they hope to refund the tenant's payment for November.

The landlord testified that the tenant has not vacated and has not filed to dispute the One-Month Notice to End Tenancy for Cause. The landlord is seeking Order of Possession.

Analysis

Under section 47 of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause and section 47(2) of the Act states that a notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

In this instance, I find that the tenant failed to make an application to dispute the One-Month Notice. Therefore I find that under the Act an Order of Possession must be issued in favour of the landlord based on the One-Month Notice.

I find that, despite being aware that the landlord fully intends to terminate the tenancy effective October 31, 2013, pursuant to the One-Month Notice to End Tenancy for Cause, the tenant deposited rent for November 2013 and the landlord was not in a position to prevent this from occurring.

Accordingly, I hereby grant the landlord an Order of Possession effective November 15, 2013. If the tenant vacates on or before that date, I order that the landlord must refund \$500.00 representing one-half the month rent to the tenant.

However, if the tenant over-holds and remains in possession of the unit for any period beyond the November 15th effective date of the Order of Possession, I order that the

landlord is entitled to retain all of the rent for November 2013 in full, and is still legally entitled under the Act to take the necessary steps to enforce the Order of Possession.

The Order of Possession must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court if necessary.

Conclusion

The landlord is successful in the application and is granted an Order of Possession based on the One Month Notice to End Tenancy for Cause. The landlord is also ordered to refund half the rent paid by the tenant for November 2013, provided the tenant fully vacates by November 15, 2013, in accordance with the 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: November 06, 2013

Residential Tenancy Branch

