



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with a landlord's application for an Order of Possession for cause. The tenant did not appear at the hearing. The landlord submitted that the hearing documents were sent to the tenant at the rental unit via registered mail on November 22, 2013. The registered mail was returned as unclaimed. Section 90 of the Act deems a person to have received documents five days after mailing so that they cannot avoid service by refusing to accept or pick up their mail.

Based upon the evidence presented to me, I was satisfied the landlord sufficiently served the tenant with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The month-to-month tenancy commenced December 28, 2011 and the tenant is required to pay rent of \$495.00 on the 1st day of every month. On October 11, 2013 the landlord posted a 1 Month notice to End Tenancy for Cause (the Notice) on the tenant's door. The Notice has a stated effective date of November 30, 2013.

The tenant did not file to dispute the Notice; however, the tenant told the landlord she unable to move out of the rental unit by the stated effective date of November 30, 2013. The landlord filed this Application for Dispute Resolution seeking an Order of Possession on November 19, 2013 and agreed to permit the tenant use and occupancy for the month of December 2013. The tenant paid for use and occupancy for December 2013. No monies have been paid or accepted for the month of January 2013.

As of the date of this hearing, the tenant has not returned possession of the unit to the landlord and the landlord believes there is a reasonable likelihood the tenant is still occupying the rental unit. The landlord is also concerned about the condition of the

rental unit. As such, the landlord requested an Order of Possession effective as soon as possible.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; the 1 Month Notice; and, a letter to the tenant that accompanied the 1 Month Notice.

Analysis

Under section 47 of the Act, a tenant who receives a 1 Month Notice to End Tenancy for Cause has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not file to dispute the Notice then the tenant is conclusively presumed to have accepted that the tenancy will end and must vacate the rental unit by the effective date.

In this case, I accept that undisputed evidence presented to me that the landlord served the tenant with a 1 Month Notice in a manner that complies with the Act and the tenant did not file to dispute the Notice. As such, I find the tenant is conclusively presumed to have accepted that the tenancy would end and must vacate the rental unit.

I accept that for the month of December 2013 the landlord permitted and the tenant paid use and occupancy. However, since the period of permitted use and occupancy has expired and no monies have been paid for use and occupancy for January 2013 I find the landlord entitled to an Order of Possession as requested. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

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: January 15, 2014

Residential Tenancy Branch

