



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPRUSTON ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, FF

Introduction

This hearing was scheduled to deal with a landlord's Application, as amended, for an Order of Possession for unpaid rent and cause, and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that the Application for Dispute Resolution and Notice of Hearing were served by posting the documents on the door of the rental unit on October 30, 2013 in the presence of a witness. I was satisfied the documents were served, as declared by the landlord, and in a manner that complies with the Act for purposes of requesting an Order of Possession. The landlord withdrew his request for a Monetary Order and I dismissed that part of the Application with leave to reapply.

At the outset of the hearing, the landlord requested an Order of Possession and a declaration that the tenant has abandoned the property. The landlord believes the tenant may have since abandoned the property as much of the tenant's possessions have been removed from the property or placed in a dumpster and the items left behind appear to be garbage. I declined to make a determination of abandonment as that was not an issue identified on the Application for Dispute Resolution and I was not provided evidence to support the landlord's assertions regarding abandonment. Rather, I encouraged the landlord to speak with an Information Officer with the Residential Tenancy Branch about determining abandonment and dealing with a tenant's abandoned possessions.

In light of the above, the landlord requested an Order of Possession in the event the tenant has not abandoned the property. I noted that I was provided with a copy of a 10 Day Notice to End Tenancy for Unpaid Rent, but a Notice to End Tenancy for Cause was not provided as evidence; therefore, I proceeded to consider whether the landlord is entitled to an Order of Possession for unpaid rent only.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord submitted that the tenancy commenced January 1, 2012 and the tenant was required to pay rent of \$600.00 on the 1st day of every month. The landlord did not collect a security deposit.

The landlord submitted that the tenant failed to pay all of the monthly rent for several months in 2012 and 2013. The landlord issued a Notice to End Tenancy in December 2012 but subsequently withdrew it and permitted the tenancy to continue. The landlord served another 10 Day Notice to end Tenancy for Unpaid Rent, in person, on October 17, 2013 (the Notice). The Notice indicates rent of \$4,900.00 was outstanding as of October 1, 2013 and has a stated effective date of November 1, 2013. The landlord testified the tenant did not pay the outstanding rent after receiving the 10 Day Notice.

The landlord testified that rent was not paid or collected for the months of November 2013 or December 2013.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord served the tenant with a 10 Day Notice to End Tenancy in person on October 17, 2013. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on the effective date of November 1, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service.

The Order of Possession may be served by posting it on the door of the rental unit. Documents posted to the door are deemed to be received three days after posting.

Should the rental unit already be vacated or abandoned, possession of the unit automatically reverts to the landlord and enforcement of an Order of Possession is not necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service in the event the tenant has not already vacated or abandoned the rental unit.

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: December 11, 2013

Residential Tenancy Branch

