



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on December 2, 2013, the tenant did not appear.

Issue(s) to be Decided

Is the landlord entitled to an order of possession and, if so, on what terms?

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

The landlord testified that this month-to-month tenancy commenced June 1, 2013. The monthly rent of \$700.00 was due on the last day of the preceding month. The landlord collected a security deposit of \$350.00.

The landlord testified that there was a written tenancy agreement on which two tenants were listed as co-tenants; the respondent PC and B. A copy of the tenancy agreement was not filed in evidence. According to the landlord the two tenants each paid one half of the rent separately.

On November 1, 2013, the landlord attempted to serve PC with a 10 Day Notice to End Tenancy for Unpaid Rent because he had not paid his share of the November rent. When the tenant refused to accept the notice the landlord posted the notice at the rental unit. The other tenant had paid \$350.00 towards the November rent so the notice only named PC.

The next day the landlord issued and posted a 1 Month Notice to End Tenancy for Cause. Once again, only PC was named on the notice.

On December the landlord issued this application for dispute resolution against PC as the only respondent and served it on PC only.

The landlord testified that MC has not paid any rent for November, December or January nor has he served the landlord with an application disputing either Notice to End Tenancy.

Analysis

Although the landlord's evidence is that PC and B are co-tenants they have been treating this tenancy as two separate tenancies. Accordingly, any orders will be against PC only. As explained in the hearing if the landlord wishes to take action against B he must serve with B with the appropriate notice to end tenancy and proceed accordingly.

Based on the testimony of the landlord I find that the tenant was served with a 10 Day Notice to End Tenancy for Mon-Payment of Rent. The tenant has not paid the outstanding rent and did not file an application to dispute the notice and is therefore conclusively presumed pursuant to section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the notice.

I also find that the tenant was served with a 1 Month Notice to End Tenancy for Cause and did not file an application to dispute the notice and is therefore conclusively presumed pursuant to section 47(4) to have accepted that the tenancy ended on the effective date of the notice.

Although that notice stated the effective date to be December 2, 2013 that date was incorrect. The effective date of a 1 month Notice to End Tenancy for Cause must be:

- not earlier than one month after the date the notice is received; and,
- the day before the day in the month that the monthly rent is paid.

In other words, where the rent is due on the last day of the preceding month, the effective date of a 1 Month Notice to End Tenancy issued and served in November is the second last day of December. An incorrect effective date is automatically changed to the correct date by operation of section 53 so the 1 Month Notice to End Tenancy for Cause is not invalidated simply because the wrong effective date had been given.

I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

I also find that the landlord has established the monetary claim set out on the Application for Dispute Resolution: \$1050.00 for arrears of rent (\$350.00/month for November, December and January) and the \$50.00 fee paid by the landlord to file this application for a total of \$1100.00.. As the landlord has treated this tenancy as two separate tenancies I order that the landlord may retain one half of the security deposit in

partial satisfaction of the claim and I grant the landlord a monetary order in the amount of \$925.00.

Conclusion

A order of possession effective two days after service has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

A monetary order has been granted to the landlord. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

