



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O, OPR

Introduction

The tenant has applied for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities).

At the hearing, which the tenant did not attend, the landlord applied for an Order of Possession.

Issues to Be Decided

- Is the Notice to End Tenancy (the “Notice”) served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?

Background and Evidence

This tenancy began July, 2012. Rent is due on the 1st day of each month in the amount of \$875.00. Utilities of \$75.00 are also payable monthly. After no payments were received for March or April, 2014, the tenant received a 10-Day Notice to End Tenancy on April 8, 2014. The tenant filed a dispute of that notice upon receiving it. Subsequently the tenant made payments of \$950.00 on May 7, 2014 and \$875.00 on June 1, 2014. The landlord applied these payments towards the arrears owed, and did not reinstate the tenancy. This leaves a balance owing of \$75.00 for April, and nothing has been paid for May or June.

Analysis

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. The landlord was therefore entitled in law to serve the notice ending this tenancy, when March and April rent was not paid as and when due. Upon receipt of that notice, the tenant should have paid the full rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so, and has provided no testimony as why the notice was disputed. The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. I accept the landlord’s testimony that the acceptance of the rental payments in May and June, were applied to the arrears, and not as a reinstatement of rent, or to rent for May and June. The tenant’s claim is dismissed, and the landlord is entitled to an Order of Possession.

Conclusion

Pursuant to Section 55(1) of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

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: June 03, 2014

Residential Tenancy Branch