



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with the hearing package on April 30, 2014 at approximately 5:00 p.m. at the residential property in the presence of his partner, as a witness. I accepted that the tenant was sufficiently served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

During the hearing the landlord requested that his monetary claim be withdrawn as the landlord unlikely to collect any of the outstanding rent. I permitted the landlord's request and granted the landlord leave to reapply within the two year time limit established under the Act. The remainder of this proceeding dealt with the landlord's entitlement to an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that under an oral agreement, the tenancy commenced in August 2012 and the tenant was to pay rent of \$1,000.00 every month. No security deposit was collected. The tenant has never paid rent since moving into the rental unit. Requests for rent have been met with excuses and promises to pay. More recently, the landlord has received several complaints from the City with respect to numerous noise by-law infractions, the accumulation of garbage and debris, and animals kept at the property.

On February 27, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) at the residential property in the presence of a by-law officer as a witness. The Notice indicates that \$19,000.00 in rent was outstanding for the period of August 2012 through to February 2014 and has a stated effective date of March 7, 2014. The tenant did not pay the outstanding rent and did not file to dispute the Notice.

Provided as documentary evidence for this proceeding was a copy of the 10 Day Notice and a signed Proof of Service for the 10 Day Notice. The Proof of Service was signed by a City by-law officer and the landlord.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. By definition, a tenancy agreement includes a tenancy agreement entered into orally. Based upon the undisputed evidence before me, I am satisfied a tenancy formed between the parties even though the tenant never paid any rent that was due to the landlord.

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 personally served a 10 Day Notice to End Tenancy to the tenant on February 27, 2014. 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 stated effective date of March 7, 2014 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 upon the tenant.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord's monetary claims were withdrawn and the landlord was granted leave to reapply for monetary compensation within two years of the tenancy ending.

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 18, 2014

Residential Tenancy Branch

