



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This participatory hearing was scheduled to deal with a landlord's request for an Order of Possession pursuant to a decision issued on May 23, 2014 under the Direct Request procedure.

As explained in the decision issued on May 23, 2014 the male respondent was excluded as a named party since he did not sign the tenancy agreement. As such, this decision, and the Order that accompanies it, names the two tenants who signed the tenancy agreement.

The tenants did not appear or were otherwise represented at the hearing. The landlord confirmed that the tenants continue to occupy the rental unit. The landlord testified that he gave three complete hearing packages, including the Notices of Hearing, to the older tenant's adult daughter (referred to by initials CL), who resides at the property with the tenants, on June 6, 2014 in the presence of a witness. The landlord also testified that he gave more copies of the Notice of Hearing to the same adult occupant on July 3, 2014 in an attempt to remind the tenants about today's hearing.

Section 89(2) of the Act provides that an Application for Dispute Resolution that pertains to an Order of Possession may be served upon a tenant by leaving it with an adult person who apparently resides with the tenants.

Based upon the above, I was satisfied the tenants were served with the hearing documents in a manner that complies with section 89(2) of the Act and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

On January 1, 2014 the landlord and two co-tenants executed a written tenancy agreement requiring the tenants to pay rent of \$975.00 on the 1st day of every month. The written tenancy agreement also includes an addendum that provides for additional rent in the event persons not named in the tenancy agreement move into the rental unit, with approval.

On May 2, 2014 the landlord wrote to the tenants and advised them that he expected an additional \$300.00 in rent since the older tenant's two adult daughters, their boyfriends and their children had began residing at the rental unit many months prior. The landlord's letter indicated the base rent was \$950.00 per month.

Also on May 2, 2014 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating rent of \$1,250.00 was outstanding as of May 1, 2014 and a stated effective date of May 12, 2014. The landlord presented the Notice to another adult occupant residing with the tenants (the adult boyfriend of the tenant's daughter) but he refused to accept it and the landlord left it at his feet. This was witnessed by the landlord's wife who signed a Proof of Service.

The tenants did not pay any rent for May 2014 and did not file to dispute the Notice. Nor has any monies been received for the months of June 2014 or July 2014 and the tenants continue to occupy the rental unit. The last month for which the landlord has received rent is April 2014. The landlord is seeking an Order of Possession effective as soon as possible.

Analysis

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. Upon receipt of 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.

Section 88 provides for the various ways a landlord may serve a 10 Day Notice upon a tenant. Section 88 permits a 10 Day Notice to be given to an adult person who apparently resides with the tenant at the rental unit. By leaving the 10 Day Notice at the feet of an adult occupant residing at the rental unit with the tenants, I find the landlord

sufficiently served the 10 Day Notice upon the tenants in a manner that complies with the Act.

Having heard the tenants did not pay any rent, even the base amount of rent, for the month of May 2014 and did not file to dispute the 10 Day Notice within five days after it was given to an adult occupant of the rental unit, I find the tenants are conclusively presumed to accepted that this tenancy would end on the effective date of the 10 Day Notice. Therefore, I conclude that this tenancy ended on May 12, 2014 and the landlord was entitled to regain possession of the rental unit by that date. As the tenants are still occupying the rental unit, I grant the landlord's request for an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants. The Order of Possession may be served in any of the permissible methods provided under section 88 of the Act.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

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: July 17, 2014

Residential Tenancy Branch

