



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

The landlord requests an Order of Possession, base upon an undisputed one month Notice to End Tenancy.

Issues to Be Decided

- Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began September 1, 2011. Rent is subsidized, and the tenant's portion of the monthly rent is \$345.00. The full market rent (or economic rent) is \$1,052.00. On March 14, 2014, the landlord posted on the tenant's door a one month Notice To End Tenancy, effective to end the tenancy on April 30, 2014. The landlord submits several discussions ensued between the tenant and the property manager about this notice, and when the tenant would be moving out. The tenant denies these discussions occurred.

The tenant testified, however, that he did first receive notice of his eviction, which was followed some time later by a package about this arbitration. He acknowledges that after receiving the original document, he contacted the tenancy office, and was informed that at that time no claim had been filed by the landlord. No dispute of the notice was ever filed, and the tenant testified he did not file a dispute about the eviction notice, as he "did not know how it worked".

The tenant continues to reside in the premises. No rent has been received by the landlord since the eviction notice was served.

Analysis

A critical issue in this case is whether the tenant was properly served, and in fact received the subject one month Notice to End Tenancy. I accept that the Notice was in fact posted on the tenant's door on March 14, 2014, and based upon the deeming provisions in section 90 of the Residential Tenancy Act, the tenant is deemed to have

received the Notice on the 3rd day after the notice was posted. However, as the tenant denied receipt at the hearing, I must consider whether the evidence satisfies me that the Notice was actually received. In this regard, there are several reasons why I find the Notice was indeed received by the tenant:

1. There were conversations about the tenant moving out, after the date the Notice was posted;
2. The tenant acknowledges having been given an initial notice of being “evicted” prior to any claim being filed by the landlord;
3. The tenant sought information from the tenancy office about this potential eviction;
4. Rent payments were withheld prior to the landlord’s claim being filed, pending the outcome of the landlord’s claim.

Section 47(5) of the Residential Tenancy Act, provides that when a tenant does not make application to dispute a notice to end the tenancy for cause within the time required, the tenant is conclusively deemed to have accepted that the tenancy ends on the effective date of the notice. Accordingly on this basis, I find the tenancy ended effective April 30, 2014. As that date has passed, the landlord has established a right to possession. Under the circumstances of this case, I find it appropriate that the Order be effective 7 days following service of the Order upon the tenant.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 7 days 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: July 11, 2014

Residential Tenancy Branch