



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KANDOLA VENTURES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, ET

Introduction

This application of the landlord was originally adjudicated through the *ex parte* Direct Request process. An order of possession and a monetary order of \$150.00 were granted June 25, 2014. Those orders were suspended on July 14, 2014, by way of a Review Consideration Decision initiated by the tenant. This decision follows a new hearing of the original application by the landlord, who requested an Order of Possession and a Monetary Order.

Issues to Be Decided

- Was the tenant been properly served with a 10 day Notice of End of Tenancy?
- Should the Order of Possession and Monetary Order be reinstated, or cancelled?

Background and Evidence

This tenancy began April 23, 2014. Rent is due on the 1st day of each month in the amount of \$950.00. On May 30, 2014 the landlord posted a 10-Day Notice to End Tenancy on the tenant's door, alleging that the full rent for May had not been received with a shortfall of \$150.00. The tenant was away from the premises at the time, and never received the Notice had had been posted on her door. Discussions ensued in which the tenant was informed the landlord would take her to arbitration for the unpaid rent, but no further written Notice was ever provided to the tenant. No rent has been paid since, and there are currently arrears of \$3,000.00. The Landlord submits he no longer is seeking a monetary order at this hearing, but only requests reinstatement of the Order of Possession.

Analysis

Section 90 of the Residential Tenancy Act provides that a document (in this case the Notice to End Tenancy) that was served by attaching it to the tenant's door is deemed to be received on the 3rd day after it is attached. This deeming provision is rebuttable however, and in this case the tenant has established that she was absent from the home on the day the Notice was posted, that she returned some days later, but never received the Notice.

As stated in section 46(1) of the Act, the ending of a tenancy, (and the subsequent granting of an Order of Possession) for non-payment of rent can occur only after a landlord has given, and a tenant receives the relevant Notice to End Tenancy. As the Notice was never received by the tenant, no Order of Possession can be granted in this case. The claim for a monetary order was withdrawn. The Orders made June 25, 2014 are therefore both vacated and cancelled.

The landlord remains at liberty to serve the tenant with a new notice to end the tenancy.

Conclusion

The Order of Possession and Monetary Order of June 24, 2014 are both cancelled.

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: August 28, 2014

Residential Tenancy Branch