



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an order of possession for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

One of the landlords attended the hearing accompanied by legal counsel, however despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 12, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord and legal counsel. The landlord gave affirmed testimony and has provided evidentiary material which includes an Affidavit of Service deposing that a legal assistant served the tenant with the documents on September 12, 2014 by registered mail, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an order of possession for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on November 15, 2013 and is to expire on November 15, 2017. The tenant still resides in the rental unit. Rent in the amount of \$3,800.00 per month is payable in advance on the 15th day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in

the amount of \$1,900.00 which is still held in trust by the landlords. A copy of the tenancy agreement has also been provided.

The landlord further testified that the tenant failed to pay rent when it was due for the month of August, 2014 and the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated August 19, 2014 and contains an expected date of vacancy of August 29, 2014. The notice states that the tenant failed to pay rent in the amount of \$3,800.00 that was due on August 15, 2014. The notice was served by leaving it at the rental unit with an adult, being the tenant's sister, who apparently resides at the rental unit with the tenant.

The landlord also testified that the tenant paid \$1,000.00 on August 26, 2014 and \$2,800.00 on September 5, 2014, but by then rent for September was also overdue. On September 17, 2014 the tenant paid all arrears, but has not paid any rent for October, 2014. The landlord did not apply for a monetary order for unpaid rent. All rental payments have been made by the tenant depositing money into the landlord's bank account. The landlord has also provided a letter dated September 12, 2014 from the landlord's counsel addressed to the tenant, which specifically advises the tenant that the payments are accepted for use and occupancy only and does not reinstate the tenancy. That letter is marked as Exhibit "A" to the Affidavit of Service of the legal assistant who served the hearing package.

Analysis

The *Residential Tenancy Act* states that where a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant must pay the rent in full within 5 days of service or deemed service under the *Act*, or dispute the notice by filing an application for dispute resolution within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit within 10 days of service.

In this case, I am satisfied that the tenant was served with the notice ending the tenancy, the tenant has not attended the hearing, did not pay the rent in full within 5 days, and I have no application by the tenant disputing the notice. I further find that the landlord has given the tenant specific written notice that the acceptance of rent after the effective date of the notice is accepted for the use and occupancy of the rental unit only, because the landlord is entitled to the money the tenant paid on August 26, 2014, September 5, 2014 and September 17, 2014. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an order of possession.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of filing.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlords on 2 days notice to the tenant.

I also grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00.

These orders are final and binding and may be enforced.

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: October 31, 2014

Residential Tenancy Branch

