



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gordon Nelson Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, OPR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order ending the tenancy earlier than a notice to end tenancy would take effect, to obtain an Order of Possession of the rental unit, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the call and gave affirmed testimony, however despite being served with the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail on October 23, 2014, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenants were served on that date and in that manner and has provided a copy of the Canada Post receipt and Customer Receipts for each of the named tenants showing those dates, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the landlord's agent applied to amend the application to strike the application for an order ending the tenancy earlier than a notice to end tenancy would take effect, and to add an application for an Order of Possession for unpaid rent or utilities. Since the application does not prejudice the tenants, I amend the application accordingly.

The landlord has provided evidentiary material consisting of a cover letter on the landlord company's letterhead showing that 18 pages are attached, however, only 10 pages including the cover page have been received. The landlord's agent stated that a copy of the tenancy agreement and other documents were attached, however do not appear in the case file nor are they uploaded to the Case Management System.

One of the tenants has also provided evidentiary material, being a 2-page letter which was not received within the time required under the Residential Tenancy Branch Rules of Procedure, and the landlord's agent stated that a copy has not been received by the landlord. I therefore decline to consider that evidence.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on February 1, 2014 and expires on January 31, 2015. The tenant still resides in the rental unit. Rent in the amount of \$1,550.00 per month is payable in advance on the 1st day of each month. On January 13, 2014 the landlord collected a security deposit from the tenant in the amount of \$775.00 which is still held in trust by the landlord. The tenancy agreement states that the tenant was required to pay a pet damage deposit in the amount of \$775.00 but the landlord's agent testified that the tenant never paid it. The landlord's agent also testified that a copy of the tenancy agreement was provided in the landlord's evidence package, but it is not in the case file.

The landlord's agent further testified that the tenant failed to pay rent when it was due for the month of November, 2014 and the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 7, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated November 7, 2014 and contains an expected date of vacancy of November 16, 2014 for unpaid rent in the amount of \$1,550.00 that was due on November 1, 2014. The landlord's agent testified that the tenant paid \$1,000.00 on November 14, 2014, for which the landlord's agent issued a receipt that had on it clearly marked, "For Use and Occupancy Only." The landlord's agent testified that a copy of the receipt was in the evidence package that was submitted to the Residential Tenancy Branch, and the landlord was permitted to provide the receipt after the hearing concluded by facsimile. The receipt shows an amount of \$1,000.00 and is dated November 14, 2014, addressed to the tenants, and also states, "For Use and Occupancy Only" at the top of the document.

The landlord's agent testified that the tenants have still not paid the arrears of \$550.00 for November's rent and has not paid any rent since the payment on November 14, 2014.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid rent or utilities, the tenant has 5 days from the date of service, or deemed service to dispute the notice or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no sooner than 10 days after the tenant receives the notice. In this case, I am satisfied that the landlord's agent served the notice by posting it to the door of the rental unit on November 7, 2014. Documents served by posting them are deemed to be served 3 days after posting, which I find is November 10, 2014. The tenant made a partial payment on November 16, 2014 however the tenant did not pay the rent in full and did not dispute the notice. 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, and I grant a monetary order in that amount.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$50.00 as recovery of the filing fee.

This order is 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: December 08, 2014

Residential Tenancy Branch

