



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and Monetary Order for unpaid rent, parking fees, late fees and recovery of the filing fee. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the landlord testified that the tenant has since satisfied all of the amounts owed to the landlord as of the date of this hearing but the landlord was still seeking an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord provided documentary evidence to establish that the tenancy commenced July 1, 2011 and the tenant is required to pay rent of \$1,450.00 and parking fees of \$45.00 on the 1st day of every month. The tenancy agreement also provides that a late fee of \$20.00 may be charged for late payments. The tenant failed to pay rent and parking when due for December 2014 and January 2015. On January 5, 2015 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door with a stated effective date of January 15, 2015.

I heard testimony that the morning of this hearing the tenant satisfied all of the arrears, and paid for February 2015.

I also heard undisputed testimony that the tenant had given the landlord a notice to end tenancy with an effective February 28, 2015 and another notice to end tenancy with an effective date of March 31, 2015. The landlord's agent stated the landlord does not accept the tenant's notice effective March 31, 2015 given the tenant's failure to pay rent when due in recent months. The tenant was understanding of the landlord's position and explained that he would like more time to move out.

Upon further discussion with both parties, the parties were in agreement that the landlord shall proceed on the basis the tenant shall be provided use and occupancy of the rental unit until February 28, 2015 and the landlord shall be provided an Order of Possession for that date; however, the landlord is agreeable to extending the vacate date until March 31, 2015 if the tenant presents payment equivalent to the monthly rent before the end of February 2015.

Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives 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.

I accept the undisputed evidence before me that the landlord posted a 10 Day Notice on the tenant's door on January 5, 2015 and pursuant to section 90 he is deemed to have received it three days later and the effective date of the 10 Day Notice automatically changed to read January 18, 2015 under section 53 of the Act. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the 10 Day Notice I find the tenancy ended on January 18, 2015. Based upon the undisputed submissions of both parties, I find the landlord agreed to extend the vacate date until February 28, 2015; therefore, I grant the landlord's request for an Order of Possession effective that date.

As discussed during the hearing, the parties remain at liberty to extend the vacate date and enforcement of the Order of Possession upon reaching a mutual agreement to do so. It is highly recommended that any such agreement be in writing.

Conclusion

The tenancy has ended and the landlord has been provided an Order of Possession effective at 1:00 p.m. on February 28, 2015.

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: February 06, 2015

Residential Tenancy Branch

