



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing was convened by way of conference call in response to a Landlords' Application for Dispute Resolution (the "Application") for an Order of Possession for unpaid rent.

The Landlord named on the Application appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. The Tenants failed to appear for the 11 minute duration of the hearing and provided no written evidence in advance of the hearing.

As a result, I turned my mind to the service of the paperwork by the Landlord. The Landlord testified that a copy of the Application and Notice of Hearing documents (the "hearing package") was served to the Tenants by attaching them to the Tenant's door on January 19, 2015 in the presence of a witness. The witness signed a Proof of Service document, which was provided into written evidence, verifying this method of service.

Section 89 of the *Residential Tenancy Act* (the "Act") determines the methods of service for the hearing package. In relation to the Landlords' Application for an Order of Possession, I am able to accept the Landlord's method of service in accordance with Section 89(2) (d) of the Act.

Section 90(c) of the Act provides that a document attached to a door is deemed to have been received three days after being attached. Therefore, based on the undisputed evidence before me, I find that the Tenants were served with the Landlords' Application for an Order of Possession on January 22, 2015.

As a result, I continued to hear the Landlord's undisputed evidence in relation to the request for an Order of Possession.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlord testified that this month to month tenancy began on December 1, 2014. A written tenancy agreement was completed and rent is payable by the Tenants in the amount of \$750.00 on the first day of each month.

The Landlord testified that the Tenants failed to pay rent on January 1, 2015. As a result, the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on January 2, 2015. The Notice, which was provided in written evidence, was attached to the Tenants' door in the presence of a witness who signed a Proof of Service document to verify this method of service.

The Notice shows an expected date of vacancy of January 12, 2015, due to \$7500.00 of unpaid rent due on January 1, 2015.

The Landlord testified that the Tenants did make a partial payment of rent on January 15, 2015 in the amount of \$650.00 and another \$125.00 which comprised a late rent fee, was paid on January 19, 2015. At this point the rental arrears were fully paid by the Tenants. However, the Landlord testified that because the Tenants were paying outside of the five day time limit afforded to them by the Notice, for each payment of rent made, the Landlord issued them with a receipt. The Landlord testified that on both receipts he wrote that the payment was being accepted for use and occupancy only and also wrote on them that the acceptance of the payment did not re-instate the tenancy.

As a result, the Landlord now seeks an Order of Possession to end the tenancy based on the fact that the Tenants failed to pay rent due under the tenancy agreement.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. In this case, the Tenants were required to pay their rent on the first day of each month.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have

accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenants by attaching it to their door on January 2, 2015. Pursuant to Section 90(c) of the Act, I find that the Tenants received the Notice on January 5, 2015. Therefore, the Tenants had until January 10, 2015 to pay the rent or make an Application to dispute the Notice. However, the Tenants did neither.

I also accept the Landlords oral testimony that he informed the Tenants that the acceptance of the two rent payments outside of the five day time limit would not re-instate the tenancy. Therefore, I find that this tenancy has not been re-instated.

As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the Notice. Therefore, the Landlords are entitled to an Order of Possession for the unpaid rent.

As the Tenants were deemed to have received the Notice on January 5, 2015, pursuant to Section 53 of the Act, I find that the vacancy date on the Notice is automatically corrected to January 15, 2015. However, as this corrected vacancy date has now passed, the Landlord is issued with an immediate Order of Possession.

Conclusion

The Tenants have failed to pay rent under their tenancy agreement. As a result, the Landlords are granted an Order of Possession effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court. Copies of the order for service and enforcement are attached to the Landlord's copy of this decision.

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 04, 2015

Residential Tenancy Branch

