



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

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

Two agents for the Landlord appeared for the hearing, but only one agent provided affirmed testimony. The Landlord had provided a copy of the notice to end tenancy into written evidence prior to the hearing. The Tenant appeared six minutes late for the hearing and the testimony provided by the Landlord's agent was recapped with the Tenant before the hearing continued.

The Landlord's agent testified that she had personally served the Tenant with a copy of her Application and the Notice of Hearing documents for this hearing. The Tenant confirmed receipt of these documents on February 26, 2015. Therefore, I find the Landlord served the Tenant with the required documents in accordance with Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Tenant testified that his tenancy started around the latter half of 2006 with the previous Landlord. The Tenant explained that he had signed a written tenancy agreement with the previous Landlord but does not have a copy. The Landlord's agent testified that they inherited this tenancy when they took over the management of the building in November 2014. The parties agreed that this tenancy was a month to month

tenancy in which the Tenant is currently required to pay rent to the Landlord of \$439.00 on the first day of each month.

The Landlord's agent testified that the Tenant failed to pay rent on February 1, 2015. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on February 10, 2015. The Notice was attached to the Tenant's door and shows an expected date of vacancy of February 20, 2015. The Landlord's agent testified that the Tenant has also failed to pay rent for March 2015.

The Tenant acknowledged receipt of the Notice which was posted on his door on February 10, 2015. The Tenant also acknowledged that he had not paid any rent for February and March 2014. The Tenant explained that he did not have the monies to pay the Landlord and was waiting on a third party to provide him with the funds. The Tenant explained that he could pay some of the outstanding arrears to the Landlord within three weeks of this hearing.

The Landlord's agent indicated that she was not in any position to negotiate more time for the Tenant to make his rent payments or to re-instate the tenancy and requested an Order of Possession.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. 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 agent's undisputed evidence that the Notice was served to the Tenant.

The Tenant confirmed that he had not paid rent to the Landlord within the five day time limit after receiving the Notice; the Tenant also had not disputed the Notice. The Tenant disclosed no evidence that he had authority under the Act to not pay his rent; having no funds to pay rent is not sufficient grounds to stop the Notice from taking effect.

Therefore, I find that in accordance with the Act, the Landlord is entitled to an Order of Possession. As the vacancy date of the Notice has now passed, the Landlord is entitled to an Order of Possession which is effective two days after it is served to the Tenant.

Conclusion

The Tenant has failed to pay rent under this tenancy. As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite. 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: March 20, 2015

Residential Tenancy Branch

