



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 43 Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for breach of an agreement and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on May 6, 2015, 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 participant who joined the call was the landlord's agent, accompanied by another agent of the landlord, who did not testify or take part in the proceedings. The landlord's agent testified that the tenant was served on that date and in that manner. A copy of a Canada Post receipt bearing that date has been provided as well as a copy of a Registered Domestic Customer Receipt addressed to the tenant at the rental address. The landlord's agent testified that the registered mail was unclaimed and returned to the landlord on May 31, 2015. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on December 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$943.00 per month is currently payable on the 1st day of each month. A copy of the tenancy agreement has been provided. At the outset of the tenancy the landlord collected a

security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant is in arrears of rent the sum of \$4,837.00.

On March 26, 2015 the landlord's agent posted a 1 Month Notice to End Tenancy for Cause to the door of the rental unit. A copy of the notice has been provided and it is dated March 26, 2015 and contains an effective date of vacancy of April 30, 2015. The reason for issuing the notice is:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

A copy of a Proof of Service document has also been provided which confirms that information and is witnessed by another person.

The landlord has not been served with an application for dispute resolution by the tenant disputing the notice, and the landlord seeks an Order of Possession.

Analysis

The *Residential Tenancy Act* is clear with respect to notices to end the tenancy given by a landlord or a tenant. If a landlord issues a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days from the date of service or deemed service to dispute the notice. If the tenant does not, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date.

In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The landlord's agent testified that the tenant was served with the notice on March 26, 2015 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or March 29, 2015, and I accept the Proof of Service document witnessed by another person. The landlord's agent also testified that the tenant has not served the landlord with an application for dispute resolution disputing the notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

The effective date of vacancy has already passed, and I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant.

The landlord's agent also testified that the tenant is in arrears of rent, but has not made an application for dispute resolution claiming a monetary order for unpaid rent. Since

the tenant must be, but has not been made aware of any such claim, I decline to make any orders or findings with respect to unpaid rent.

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

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 tenant.

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

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: June 16, 2015

Residential Tenancy Branch

