



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, CNR, MNR,

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. For a monetary order for unpaid rent.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 3, 2015 (the, "Notice").

The landlord's agent appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matter

Tenant's application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 11:10 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

Landlord's application

Although served with the Application for Dispute Resolution and Notice of Hearing, by registered mail, sent on November 25, 2015, the tenant did not appear. A Canada post tracking number was provided as evidence of service.

The landlord's agent testified that the package was returned unclaimed.

Residential Tenancy Policy Guideline #17 states,

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

I find that the tenant has been duly served in accordance with Section 90 of the Act.

At the outset of the hearing the landlord's agent indicated that all rent has been paid by the tenant; however, they seek to obtain an order of possession.

Issue to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The tenancy began on May 1, 2011. Rent in the amount of 850.00 was payable on the first of each month. A security deposit of \$405.00 was paid by the tenant.

The landlord's testified that the tenant was served with the Notice, which was acknowledged by the tenant when they filed their application for dispute resolution on November 9, 2015.

The landlord's agent testified that the tenant was in rent arrears when the Notice was served. The agent stated that although the tenant disputed the Notice, they did not pay the outstanding rent within 5 days and then they failed to pay rent for December 2015 and January 2016.

The landlord's agent testified that on January 8, 2016, the tenant paid the outstanding rent; however, they do not want to continue the tenancy and seek an order of possession.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

Although the tenant disputed the Notice within the time limit permitted under the Act; however, the tenant's application had no merit, as rent was not paid within 5 days.

Further, although the tenant has paid rent in full as of January 8, 2016, the landlord is seeking to end the tenancy. As rent was not paid within 5 days after the Notice was received, and the tenant did not have the authority under the Act to withhold rent, such as an order from an Arbitrator. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant failed to pay rent within the time limited permitted by the Act. The landlord is granted an order of possession

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: January 12, 2016

Residential Tenancy Branch

