



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

The landlord had applied for an Order of Possession under the Direct Request procedure and on January 4, 2016 the Adjudicator reviewing the Application ordered a participatory hearing. At this participatory hearing only the landlord appeared. The landlord testified that he served personally an adult female occupant of the rental unit with the hearing documents within three days of receiving the January 4, 2016 decision. Under section 89(2) of the Act, serving hearing documents upon an adult person who apparently resides with the tenant in the rental unit is sufficient where a landlord seeks an Order of Possession. In the absence of any evidence to the contrary I accepted that the tenant was served in a manner that complies with section 89(2) of the Act and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

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

Background and Evidence

The tenancy commenced August 1, 2015 and the landlord collected a security deposit of \$387.50. The co-tenants were required to pay rent of \$775.00 on a month-to-month basis. I noted that the tenancy agreement did not stipulate the day rent was payable. The landlord testified that the rent was payable on the first day of every month. I heard that one of the co-tenants (referred to by initials RM) moved out of the rental unit leaving the tenant named in this application in possession of the rental unit. The tenant permitted other occupants to move in to the rental unit. The tenant did not pay rent for the month of December 2015.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on December 15, 2015 indicating rent of \$775.00 was outstanding as of December 1, 2015 and a stated effective date of December 28, 2015 (the Notice). The landlord attended the property

with a witness to serve the Notice. The tenant was not there so the landlord presented the Notice to an adult male occupant of the rental unit referred to by initials SP. The landlord stated that SP refused to sign any acknowledgement of the Notice or take the Notice in his hand so the landlord put it down on the coffee table in front of SP.

The outstanding rent for December 2015 was never paid. Further, the rental unit remains occupied by the tenant and/or his occupants and no monies have been received for the months of January 2016 or February 2016.

The landlord seeks to regain possession of the rental unit.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; the 10 Day Notice; and, Proof of Service of the 10 Day Notice.

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 serve 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.

Upon hearing from the landlord, I accept that an adult apparently residing in the rental unit with the tenant was served with the 10 Day Notice on December 15, 2015 and this meets the service requirements of section 88 of the Act. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on the effective date of December 28, 2015. Accordingly, I find the landlord entitled to regain possession of the rental unit and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The tenant will be considered served with the Order of Possession on the date the landlord personally serves it upon an adult person apparently residing in the rental unit or three days after the Order of Possession is posted on the door of the rental unit.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service.

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 18, 2016

Residential Tenancy Branch

