



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes opr, opl, mnr, mndc, ff, cnr, ff

Introduction:

The tenant applied to have a 10 day Notice to End Tenancy cancelled.

The landlord subsequently applied for an Order of Possession, pursuant to both the 10 day Notice, as well as a 2 Month Notice to End Tenancy given for landlord use of the premises. The landlord also seeks overholding rent from the tenant.

Both parties participated in the hearing. The tenant denies receiving the landlord's application and evidence package. The landlord testified it was served by registered mail to the tenant, (who resides in the same house as the landlord). The card advising the tenant of the registered mail was provided to the tenant in the same way any of his mail is provided.

Issues to be decided:

1. Does the tenancy end on the basis of either Notice, and if so is the landlord entitled to an order of possession?
2. Is the landlord entitled to overholding rent from the tenant?

Background and Evidence:

This tenancy began June 6, 2015. Rent is \$1,200.00 per month. The landlord alleges the rent is due on the 6th day of each month, while the tenant alleges it is due on the 1st day of each month.

The landlord testified that a 2 Month Notice to End Tenancy was served to the tenant on December 2, 2015, effective to end the tenancy February 6, 2016. The tenant remains in possession, however and has not left. The tenant denies receiving this Notice. The landlord's witness testified that the Notice was handed by him to the tenant on December 2, 2015.

The landlord testified that a 10 Day Notice to End Tenancy was later served upon the tenant on January 3, 2016. The tenant filed a dispute of this notice on January 8, 2016.

The tenant testified he paid rent for January and for February. The landlord testified that the January rent was returned to the tenant, as compensation for the compensation the tenant was entitled to due to being served the Two Month Notice. The landlord did not accept the tenant's February rent, to avoid reinstating the tenancy.

Analysis:

I found the tenant guilty of providing only that testimony that supported his case, without sharing other relevant information. For example, the tenant testified he paid the rent for January and February, but failed to disclose that the January rent was returned a few days later, and the February rent immediately returned to him. In all areas where testimony of the parties was in conflict, I prefer the evidence of the landlord or her witness over that of the tenant. I found the landlord's witness to be very forthright and credible and fully accept his testimony about having served the tenant with the Two Month Notice to End Tenancy, as opposed to the tenant's testimony initially that he was not served, and later that the Notice was given but was retracted by the witness. In my view, the tenant is desperate to remain in the premises, and as a result has coloured his testimony.

The Two Month Notice was never disputed by the tenant, and section 49(9) of the Residential Tenancy Act provides that when a tenant does not apply to dispute a Two Month notice within 15 days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective day of the notice, and must vacate the rental unit by that date. I find therefore that the tenant is conclusively presumed to have accepted that the ending of the tenancy. The landlord is entitled to an Order of Possession, and I make such order effective February 29, 2016.

The landlord no longer seeks a claim for unpaid utilities, and since the tenancy ends based upon the Two Month Notice, I need not address any issues regarding the 10 Day Notice. I also note that the landlord is not seeking a monetary order for any unpaid rent other than overholding rent. I note that in cases where a 2 Month Notice to End Tenancy has been given, section 51(1) of the Residential Tenancy Act entitles the tenant to compensation equal to one month's rent from the landlord. The rent for January was returned to the tenant, representing the payment to the tenant of this compensation. The landlord has also returned and forgiven the rent for February, and does not seek an order for February rent. The pro-rated overholding rent from February 6 to February 29 is \$951.72. The tenant must pay this sum to the landlord, together with the landlord's filing fee of \$50.00, for a total of \$1,001.72.

As the tenancy ends based upon the Two Month Notice, I need not address the issues as to the 10 Day Notice. The tenant's claim disputing that notice is now moot.

Conclusion:

The tenancy has ended. The landlord is issued an order of Possession, effective February 29, 2016. The tenant must pay the sum of \$1,001.72 to the landlord.

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 22, 2016

Residential Tenancy Branch

