



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for cause and unpaid rent and a Monetary Order for unpaid rent. The landlords had named two tenants in filing this application and sent each respondent a copy of the hearing package via registered mail addressed to the rental unit on February 11, 2016. Both registered mail packages were returned as unclaimed. The landlords provided a copy of the registered mail envelopes, including tracking numbers.

The landlords testified that the second named respondent (referred to by initials SB) was not actually a tenant under the tenancy agreement but was only an occupant. The landlords also testified that SB no longer lived at the rental unit. I amended the application to exclude the second named respondent since she was not a tenant.

The landlord confirmed that the first named tenant (referred to by initials SH) is a tenant pursuant to a tenancy agreement and continues to occupy the rental unit.

Section 90 of the Act deems a person to have received documents five days after mailing, even if the recipient refuses to accept or pick up their mail. Accordingly, I found SH to be deemed served with notification of this proceeding and I continued to hear from the landlords without the tenant present.

As the hearing progressed, the landlords withdrew their request for a Monetary Order. The request was permitted and the landlords remain at liberty to file another Application within the time limit for doing so if they chose to pursue the tenant for monetary compensation.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Background and Evidence

The landlords testified that the tenant is required to pay rent on the first day of every month. On January 11, 2016 the landlords personally served the tenant with a 1 Month Notice to End Tenancy for Cause, with a stated effective date of February 10, 2016, at the rental unit, in the presence of an electrician. The landlords submitted that the tenant continues to occupy the rental unit, did not file to dispute the 1 Month Notice, and has not paid rent.

Included in the landlords' evidence package was a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 16, 2016. The landlords testified that the 10 Day Notice was served to the tenant along with the evidence package sent to the tenant for this proceeding on February 11, 2016.

Analysis

I accept the undisputed evidence before me that the landlords personally served the tenant with a 1 Month Notice to End Tenancy for Cause under section 47 of the Act on January 11, 2016. Upon review of the Notice, I find that it is in the approved form and meets the requirements of the Act with the exception of the effective date. Where a stated effective date is non-compliant, section 53 of the Act provides that the effective date automatically changes to comply. Having heard rent is payable on the first day of every month, the effective date should have read February 29, 2016 under section 47 of the Act. Therefore, the effective date changes to read February 29, 2016.

Where a tenant receives a 1 Month Notice under section 47(5) of the Act, the tenant has 10 days to file an Application for Disputer Resolution to dispute the Notice. If the tenant does not file to dispute the Notice section 47(5) provides that the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and must vacate the rental unit by that date. In this case, the tenant did not file to dispute the 1 Month Notice. Therefore, I find this tenancy ended February 29, 2016 and the landlords are entitled to regain possession of the rental unit. Provided to the landlords is an Order of Possession effective two (2) days after service upon the tenant.

Having found the tenancy at an end pursuant to the 1 Month Notice served on January 11, 2016 and I have issued an Order of Possession based upon that Notice, I find it unnecessary to further consider the landlord's entitlement to an Order of Possession for unpaid rent.

The landlords withdrew their request for a Monetary Order and I do not provide one with this decision.

Conclusion

The landlords are provided an Order of Possession effective two (2) days upon serve upon the tenant.

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 24, 2016

Residential Tenancy Branch