



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes opr, mnrr, ff

Introduction

The landlords apply for an Order of Possession, a Monetary Order for unpaid rent, and an order to recover their filing fee.

The landlords attended the conference call hearing, but the tenant did not attend. I accept that the tenant was properly served with the Application for Dispute resolution hearing package by way of registered mail sent to the subject residential rental unit. Such service satisfies the provisions of Section 89(1) of the Residential Tenancy Act and the tenant is deemed to have received these documents by virtue of Section 90(a). The tenant had been previously served with a 10 day Notice To End Tenancy on February 23, 2016, which had been posted on his door.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy effective to end this tenancy, and entitle the landlords to an Order of Possession?
- Is money payable by the tenant to the landlords?

Background and Evidence

This tenancy began April 1, 2015. Rent of \$1,300.00 is due on the 1st day of each month. A security deposit of \$650.00 was paid at the start of the tenancy. On February 23, 2016 the landlords served the tenant with a 10-Day Notice to End Tenancy, after not receiving rent for the month of February. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice. The tenant remains in possession, and has paid no further rent.

Analysis

By virtue of section 46(5)(a) of the Residential Tenancy Act, in the absence of a required rental payment after being served with a 10 Day Notice to End Tenancy, or a dispute of that Notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice. The effective date of the Notice has passed and no rent has been paid since the Notice was given. The tenancy has therefore ended, and the landlords have established a right to possession.

The landlords are entitled to recover compensation equal to three months of rent (for February, March and April). This includes unpaid rental arrears for February, and compensation for the tenant overholding the tenancy ended by virtue of the 10 day Notice (pursuant to section 57(1)(3) of the Residential Tenancy Act).

Even though the landlord may recover possession prior to the end of April, loss of rental income is proven to the end of April, as I accept that the tenant will be liable for the time required by the landlords to clean and make any necessary repair after the tenant has vacated. The tenant knows or should have known that by overholding into April, he is therefore liable for the landlords' loss of rent for April. Although a loss of rent for April was not claimed in the landlords' Application, Rule 4.2 of the Rules of Procedure permits an application to be amended at the hearing, in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. Such amendment is therefore appropriate and is ordered in this case.

Since the landlords are successful with this claim, it is also appropriate that the landlord recover the \$100.00 filing fee from the tenant.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$3,900.00 representing the rental arrears, overholding rent and loss of rental income for February, March and April, and the recovery of the \$100.00 filing fee, for a total of \$4,000.00.

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: April 11, 2016

Residential Tenancy Branch