



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This is an application brought by the Landlord requesting an Order of Possession based on a Notice to End Tenancy for nonpayment of rent.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the landlord has the right to an Order of Possession.

Background and Evidence

This tenancy began on March 27, 2015 with a monthly rent of \$1400.00, due on the first of each month.

The tenants failed to pay the May 2016 rent, and therefore on May 2, 2016 a 10 day Notice to End Tenancy was mailed to the tenants by registered mail.

Section 90 of the Residential Tenancy Act states:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

Therefore, the Notice to End Tenancy is deemed to have been received on May 7, 2016.

The tenant subsequently paid the outstanding rent on May 16, 2016, however the landlord accepted the rent for use and occupancy only and informed the tenants that he still expected them to vacate the rental unit.

Section 46 of the Residential Tenancy Act states:

46(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

The tenants did not pay the outstanding rent within the 5 day grace period, and therefore, the landlord stated that he is requesting an Order of Possession for the rental unit.

The tenants testified that they do not dispute the landlords request for an Order of Possession, and are attempting to find a new place to rent but have been unable to do so.

The tenants therefore requested an extension of time to find a new place, and at the hearing the parties came to the following agreement:

Mutual Agreement

The parties have agreed that the tenants will vacate the rental unit on July 15, 2016.

The parties also agree that the tenants will only be liable for one half months' rent for the month of July 2016, if they vacate the rental unit on July 15, 2016, and the tenants agreed to pay that one half months' rent on July 1, 2016.

Conclusion

Based on the above mutual agreement, and pursuant to section 55 of the Residential Tenancy Act, I have issued an Order of Possession for 1:00 p.m. on July 15, 2016.

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: June 27, 2016

Residential Tenancy Branch