



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent.

The landlord's application was originally initiated as a direct request proceeding, which is a non-participatory hearing. In an interim decision issued on May 12, 2016, an adjudicator determined that the matter was not appropriate for a non-participatory hearing and ordered that a participatory hearing take place. The interim decision directed the landlord to serve the tenant with a copy of the interim decision and a Notice of Reconvened Hearing (the "Hearing Package").

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was personally served with the Hearing Package on June 5, 2016, at the rental unit where the tenant was residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Hearing Package on June 5, 2016, the day it was served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The landlord testified that this tenancy began on April 1, 2014 on a month-to-month basis. Rent in the amount of \$1,350.00 was payable on the first of each month. The tenants did not remit a security deposit at the start of the tenancy. The tenants continue to reside in the rental unit.

A 10 Day Notice for unpaid rent of \$1,350.00 due on May 1, 2016 was issued to the tenants. The landlord testified that she personally served the 10 Day Notice to the tenants on May 2, 2016. The notice indicates an effective move-out-date of May 11, 2016.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Section 52 of the *Act* establishes that in order to be effective, a notice to end tenancy must be in writing and must be signed and dated by the landlord giving the notice. Based on the notice before me, which remains undated by the landlord, I find the tenants were not served with an effective notice. Due to the ineffective notice, I find the landlord is not entitled to an order of possession and the tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

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 17, 2016

Residential Tenancy Branch