



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for unpaid rent or utilities.

An agent and a witness for the landlord attended the hearing, and each gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing personally on May 18, 2016, no one for the tenant attended the call. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord's agent and the landlord's witness. The landlord's witness testified that he personally served the tenant with the Landlord's Application for Dispute Resolution and notice of this hearing on that date and in that manner, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on November 1, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$375.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$187.50 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant has a history of paying rent late, and on May 6, 2016 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated May 6, 2016 and contains an effective date of vacancy of May 16, 2016 for unpaid rent in the amount of \$669.66 that was due on April 1, 2016. The tenant paid some rent since, being \$312.04 in May and \$312.04 in June, 2016, however the landlord has not been served with an application for dispute resolution by the tenant disputing the notice, and the tenant, after all discounts, is still in arrears of rent.

The landlord is an aid society and seeks an Order of Possession, but does not seek a monetary order for unpaid rent or for recovery of the filing fee.

The landlord's witness testified that he served the hearing package, including the Landlord's Application for Dispute Resolution and notice of this hearing to the tenant personally on May 18, 2016.

The witness also testified that on May 6, 2016 he personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 6, 2016.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent, in which case the notice is of no effect, or dispute the notice by filing an application for dispute resolution and serving the landlord. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I am satisfied in the testimony of the landlord's agent and witness that the tenant was served with the notice to end the tenancy personally on May 6, 2016. The tenant did not pay the rent in full or dispute the notice within the 5 day period, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled under the *Act* to an Order of Possession.

Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

I leave it to the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to 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: June 16, 2016

Residential Tenancy Branch