



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

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

The tenant and landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf. The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application.

Issue(s) to be Decided

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on June 1, 2011 on a fixed term until August 31, 2011 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$676.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$325.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant confirmed personal receipt of the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") dated May 26, 2016 on this same date at his rental unit. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on May 26, 2016, the day it was personally served.

The 10 Day Notice indicated an outstanding rental arrears of \$1,383.00 was due on May 1, 2016. The notice indicates an effective move-out-date of June 5, 2016. The

landlord testified that the tenant has made some payments since the 10 Day Notice was issued, however each payment was accompanied by a use and occupancy receipt. The tenant acknowledged the receipts and testified that the first partial payment he made since he received the 10 Day Notice was on June 22, 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.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the full overdue rent or file an application to dispute the notice within five days, 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 unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an order of possession to the landlord effective two (2) days after service on 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: July 25, 2016

Residential Tenancy Branch

