



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR

Introduction

This was a hearing with respect to the landlord's application for an order of possession and a monetary order. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenant did not attend although he was served with the application and Notice of Hearing sent by registered mail on November 2, 2016. According to Canada Post records the tenant did not pick up the registered mail, although several notices were left for the tenant stating where the registered mail could be picked up. Failure to pick up registered mail is not a valid excuse for failure to attend a hearing. Pursuant to section 90 of the *Residential Tenancy Act*, the tenant is deemed to have received the registered mail on the 5th day after it was mailed, which was on November 7, 2016.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a strata title apartment in Surrey. There is a written tenancy agreement, but the landlord has not provided a copy. The tenancy began October 1, 2015. The monthly rent was \$1,275.00, payable on the first of each month. The tenant paid a security deposit equivalent to a half month's rent at the start of the tenancy. The landlord testified that the rent was increased to \$1,312.00 per month commencing October 1, 2016.

The tenant gave the landlord a written notice that he intended to move out of the rental unit on November 1, 2016. The landlord accepted the notice, but advised the tenant that the tenancy must end on October 31, 2016, the last day of the month. The tenant later requested that the landlord permit him to stay for an additional month. The tenant paid rent for November and the landlord issued a receipt for the payment stating that the payment was accepted "for use and occupancy only". The tenant agreed that he would move at the end of November.

The tenant has made a further payment of rent for December by direct deposit to the landlord's bank. The landlord issued a receipt for the payment, again stating that the payment was accepted "for use and occupancy only". At the hearing the landlord said the he wants the tenancy to end pursuant to the tenant's written notice and he requested an order of possession effective December 31, 2016. He said that he is prepared to consider giving the tenant more time to move if the tenant requests it, but he does expect the tenancy to end pursuant to the tenant's written notice.

Analysis

Section 55, Of the *Residential Tenancy Act* provides that a landlord may request an order of possession if the tenant has given the landlord a notice to end the tenancy. The tenant gave the landlord an effective written notice, but he did not move out of the rental unit. The tenant has made rent payments for November and December; they were accepted by the landlord: "for use and occupancy only" and the landlord thereby confirmed that he would not reinstate the tenancy, but continued to require the tenant to move out pursuant to his notice.

I find that the landlord is entitled to an order of possession as claimed. I grant the landlord an order of possession effective December 31, 2016 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

The landlord requested a monetary order for unpaid rent, but he confirmed that rent is paid up to date and his claim for a monetary award is therefore dismissed without leave to reapply. The landlord is entitled recover the \$100.00 filing fee for his application. He may retain the said sum for the security deposit that he holds.

Conclusion

The landlord has been granted an order of possession. His application for a monetary award has been dismissed.

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: December 20, 2016

Residential Tenancy Branch