



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

On January 24, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession due to unpaid rent. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing on time; however, the Tenant T.J. attended at the conclusion of the hearing. The Landlord provided affirmed testimony that she served the Tenant with the Application for Dispute Resolution and Notice of Hearing, in person on February 7, 2017. I find that the Tenants have been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

At the end of the hearing, after I granted the Landlord an order of possession, the Tenant T.J. joined hearing. The Tenant T.J. submitted that she received the Notice of Hearing from the Landlord, but did not provide an explanation why she was late appearing.

The Tenant T.J. submitted that she received the 10 Day Notice to End Tenancy for Unpaid Rent from the Landlord but did not understand the requirement to dispute the Notice within 5 days of receiving it.

The Tenant was informed that the Landlords are granted an order of possession because the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy has ended. Even if the Tenant had appeared on time, the tenancy has ended pursuant to section 46(5) of the Act.

Issues to be Decided

- Are the Landlords entitled to an order of possession for unpaid rent?

Background and Evidence

The Landlord testified that the tenancy started on October 1, 2016. Rent in the amount of \$1,350.00 was payable on the first day of each month. The Tenants paid the Landlords a security deposit of \$675.00.

The Landlord testified that she served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the 10 Day Notice") on the Tenant T.J. at the rental unit on January 11, 2017.

The Landlord provided a copy of the 10 Day Notice dated January 11, 2017, which was served to the Tenants. The 10 Day Notice has an effective date of January 21, 2017.

The Landlord provided a proof of service document providing a witness statement that the 10 Day Notice was served in person to Tenant T.J. on January 11, 2017.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The Notice states that the Tenants have failed to pay rent for the month of January 2017, in the amount of \$1,350.00.

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for January 2017, within 5 days of receiving the 10 Day Notice.

The Landlord testified that the Tenants did not pay any amount of money to the Landlord since the 10 Day Notice was issued to the Tenants.

There is no evidence before me, or within the Residential Tenancy Branch case management system that that the Tenants made an application to dispute the 10 Day Notice.

The Landlord seeks an order of possession for the rental unit.

Analysis

Based on the evidence before me, and the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants did not pay the outstanding rent within five days of receiving the Notice, and did not apply to dispute the Notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants failed to pay rent owing under the tenancy agreement and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two days after service on the Tenants.

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: February 27, 2017

Residential Tenancy Branch