



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 an Application for Dispute Resolution by the Landlord for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 12, 2017 (the "Notice").

Only the Landlord's agent appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord's agent testified that the Landlord personally served the Tenant with the Notice of Hearing and their Application on April 24, 2017. The Landlord's agent testified that this service was witnessed by R.R. who signed a witness statement confirming service. Accordingly, I find the Tenant was duly served as of April 24, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

Background and Evidence

The Landlord's agent testified as to the terms of the tenancy. She confirmed that the parties did not have a written tenancy agreement. She stated that she was not aware when the tenancy had begun, but confirmed that monthly rent was payable in the

amount of \$680.00. She also stated that the Tenant paid a security deposit in the amount of \$325.00.

The Tenant failed to pay rent for the month of April 2017. The Landlord issued the Notice on April 12, 2017 indicating the amount of \$680.00 was due as of April 1, 2017.

Introduced in evidence was a copy of the Proof of Service—Notice to End Tenancy which indicated the Notice was posted to the rental unit door on April 12, 2017. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88 of the *Residential Tenancy Act*, that the Tenant was served with the Notice as of April 15, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the outstanding rent was paid within five days of service, namely, April 20, 2017. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord's agent testified that the Tenant paid \$450.00 on April 25, 2017. The Landlord accepted these funds and indicated she was accepting it for use and occupancy only and did not reinstate the tenancy.

The Tenant did not apply to dispute the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: May 25, 2017

Residential Tenancy Branch