



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, FF

Introduction

The landlord applies for an order of possession and recovery of the filing fee.

This matter originally came on for hearing November 21, 2017. The tenant did not attend that hearing and the landlord was issued an order of possession and a monetary order for recovery of the \$100.00 filing fee.

The tenant applied for review of that decision and was successful. A new hearing was directed and the two orders have been suspended pending the hearing. This is that new hearing.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has this tenancy ended, entitling the landlord to an order of possession?

Background and Evidence

The details of the tenancy have been described in the first decision November 21, 2017.

It is agreed that the landlord issued and served a one month Notice to End Tenancy dated July 26, 2017, claiming the tenant had been repeatedly late paying rent.

The Notice was posted on the tenant's door on July 26 however the tenant requested another copy and the landlord gave her a copy of the Notice in person about a week later.

The tenant has not applied to cancel the Notice and it has not been withdrawn by the landlord.

Section 47 of the *Residential Tenancy Act* was summarized for the parties. It provides that unless a tenant applies to cancel such a Notice within ten days after receiving it the tenant is conclusively presumed to have accepted the end of the tenancy. The tenant says she paid the rent that month (August) and thought the Notice was cancelled.

It would appear that the landlord has also issued at least one ten day Notice to End Tenancy for unpaid rent. No such Notice was filed in this proceeding. The landlord indicated that he had or was pursuing his remedies under the ten day Notice in another proceeding. He could not provide a file number.

Analysis

Payment of rent does not cancel a one month Notice to End Tenancy for cause.

The tenant has not made application to cancel this Notice. As a result the tenancy ended by operation of s. 47.

Conclusion

I direct that the suspension of the order of possession and monetary award granted November 21, 2017 be lifted. Both orders are now in full force and effect.

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: January 23, 2018

Residential Tenancy Branch