



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIVING EAST VILLAGE DEVELOPMENT LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), for an order of possession, for a monetary order for unpaid rent and an order to recover the cost of filing the application from the tenant.

The landlords’ agents attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords’ agent testified the Application for Dispute Resolution and Notice of Hearing were served by posting to the door of the rental unit on December 10, 2018, which was witnessed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served three days later. I find that the tenant has been duly served in accordance with the Act.

Although I have found the tenant was duly served in accordance with the Act, when an Application for Dispute Resolution and Notice of Hearing is served in the above manner; only the application for an order of possession, pursuant to section 55 of the Act, can proceed. Therefore, the landlord’s application for a monetary order is dismissed with leave to reapply.

The landlords’ agents appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

Based on the testimony of the landlords' agent, I find that the tenant was served with a One Month Notice to End Tenancy for Cause (the "Notice"), issued on October 12, 2018, by posting to the door of the rental unit.

The Notice explains the tenant had ten (10) days to dispute the Notice. The Notice further explains if the Notice is not disputed within the ten days that the tenant is presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice, which was November 12, 2018.

The landlords' agents' stated that they have had conversation with the tenant and the tenant's advocate to give the tenant more time to vacate; however, they cannot give the tenant any addition time as it would be unfair to the landlord and the other occupants.

Analysis

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

The tenant did not apply to dispute the Notice and therefore conclusively presumed under section 47(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 tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to dispute the Notice. 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. The balance of the landlord's application is dismissed with leave to reapply.

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 18, 2019

Residential Tenancy Branch