



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 8, 2020, wherein the Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 2, 2020 (the "Notice").

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on February 28, 2020. Only the Landlord called into the hearing. He was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:10 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord stated that he put a copy of the Application materials in the Tenant's mailbox. Documentary evidence provided by the Landlord also confirms that the Landlord served the Tenant with the Notice of Hearing and the Application by registered mail on January 12, 2020. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of January 17, 2020 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 *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed this tenancy began February 1, 2019 for a fixed term ending on January 31, 2020. Monthly rent was payable in the amount of \$1,550.00.

The Landlord testified that the Tenant failed to pay rent for January 2020, following which he personally served the Notice on the Tenant on January 2, 2020. A copy of the Proof of Service was provided in evidence.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, January 7, 2020. 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 stated that the Tenant did not apply to dispute the Notice and did not pay the outstanding rent within five days of service of the Notice. The Tenant also failed to pay the February rent.

The Landlord also stated that the Tenant stopped residing at the rental unit some time in late January but has returned on numerous occasions. As such, he requested an Order of Possession.

Analysis

Based on the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

(6)If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are only four occasions when a Tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenant had no such legal authority to withhold rent. I therefore find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord's testimony that he served the Notice on the Tenant on January 2, 2020. I also find that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlord is at liberty to apply for monetary compensation for unpaid rent, cleaning and repairs to the rental unit and authority to retain the Tenant's security deposit. The Landlord was reminded of the strict 2-year limitation imposed by section 60 of the *Act*. As the date the Tenant vacated the rental unit was not clear, I find, for the purposes of section 60, that the tenancy ended on February 28, 2020: the date of the hearing.

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: February 28, 2020

Residential Tenancy Branch