



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and cause.

The landlord appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing materials upon the tenant.

The landlord testified that she sent the proceeding package to the tenant via registered mail on October 7, 2021. The landlord provided a registered mail receipt, including tracking number, as proof of service. A search of the registered mail tracking number showed the registered mail was successfully delivered on October 8, 2021. The landlord testified that she sent a second package to the tenant, containing additional evidence, via registered mail on December 10, 2021. The landlord confirmed the registered mail was sent to the rental unit address and up until last week the tenant was still occupying the rental unit.

I found the tenant duly served with the hearing materials and I continued to hear from the landlord without the tenant present.

The landlord indicated that the tenant may have vacated the rental unit a few days ago; however, the landlord has not yet confirmed that and the landlord continues to seek an Order of Possession in the event the tenant has not vacated.

On a procedural note, I amended the landlord's application to indicate this application is being made under the Residential Tenancy Act rather than the Manufactured Home Park Tenancy Act. I heard and was provided documentation, including a sublet

agreement between the landlord and the manufactured home park, to demonstrate the landlord rents the manufactured home site and in turn rents the manufactured home on the site to the tenant. Accordingly, this type of rental agreement falls under the Residential Tenancy Act and I see no prejudice to the tenant in amending the application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or cause?

Background and Evidence

Under an oral tenancy agreement, the tenancy started on July 1, 2019. The rent was set at \$1200.00 payable on the first day of every month. A security deposit was not collected. The landlord is the stepmother to the tenant.

The landlord testified that the landlord served the tenant with a One Month Notice to End Tenancy for Cause on August 30, 2021 and then the tenant did not pay rent for September 2021. On September 2, 2021 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on the door of the rental unit indicating rent of \$1200.00 was outstanding as of September 1, 2021 and a stated effective date of September 12, 2021.

The landlord testified that the tenant did not pay the outstanding rent after the 10 Day Notice was posted, or file an Application for Dispute Resolution to dispute the 10 Day Notice, yet the tenant continued to occupy the rental unit and did not pay any rent for subsequent months.

Among other things, I was provided with a copy of the 10 Day Notice and a signed Proof of Service for the 10 Day Notice.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The definition of tenancy agreement, as provided under section 1 of the Act, includes agreements entered into orally.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"). When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1200.00 on the first day of every month and the tenant has failed to do so for the month of September 2021. I was not provided any evidence to suggest the tenant had a legal right to withhold rent from the landlord.

I also accept the unopposed evidence before me that the landlord posted a 10 Day Notice on the door of the rental unit on September 2, 2021. Accordingly, I find the tenant to be deemed in receipt of the 10 Day Notice three days later, on September 5, 2021 pursuant to section 90 of the Act. Although the stated effective date on the 10 Day Notice may be incorrect, section 53 of the Act provides that an effective date will automatically change to comply with the Act and an inaccurate effective date does not automatically invalidate a notice to end tenancy. In keeping with section 53 I find the effective date automatically changed to read September 15, 2021.

I find the tenant had until September 10, 2021, to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended 10 days after the 10 Day Notice was deemed received, or September 15, 2021.

I also note that the landlord incorrectly indicated the Manufactured Home Park Tenancy Act applies in preparing the 10 Day Notice when in fact the Residential Tenancy Act applies. Pursuant to the authority afforded me under section 68(1) of the Act, I amend the 10 Day Notice to reflect the correct Act as I am satisfied the amendment ought to have been known, is non-prejudicial to the parties, and reasonable to do in the circumstances.

In light of all of the above, I uphold the 10 Day Notice and I find the tenancy ended on September 15, 2021 due to unpaid rent. Therefore, I find the landlord is entitled to regain possession of the rental unit. In the event the tenant has not yet vacated the rental unit, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Having found the tenancy ended due to unpaid rent, I find it unnecessary to further consider whether the tenancy ended for cause and I do not consider that remedy further.

Conclusion

The tenancy has ended for unpaid rent and, in the event the tenant has not already vacated the rental unit, the landlord is provided an Order of Possession effective two (2) days after service.

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 28, 2022

Residential Tenancy Branch