



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession and recovery of the filing fee.

The Landlord provided affirmed testimony that she served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 14, 2011, and provided the customer receipt/tracking slip from Canada Post as evidence. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and an order for recovery of the filing fee?

Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on October 01, 2003; that the rental unit is subsidized housing; and rent is due on the first day of the month. The Tenant paid the Landlord a security deposit of \$353.00 on September 23, 2003. The Landlord testified that the Tenant's mother, GP, was also named on the tenancy agreement as a tenant however she is deceased as of 2010 and the only party to the tenancy agreement at this time is the Tenant, RA.

The Landlord testified that the Tenant's rental subsidy was reviewed and her monthly rent was reduced to \$347.00 as of October 01, 2010. The Landlord provided in their evidence a copy of their letter of September 28, 2010 which outlined the rent reduction the Tenant was receiving effective October 01, 2010.

The Landlord testified that she served the Tenant with the One Month Notice to End Tenancy for Cause by personally serving it on the Tenant at 2:30 P.M. on August 16, 2011. The Landlord provided in their evidence a copy of a Mutual Agreement to end the

tenancy signed by the Tenant and Landlord on August 29, 2011, which stated that the Tenant agreed to vacate the rental unit on September 30, 2011.

The Landlord stated that the Tenant did not move out of the rental unit on September 30, 2011 as previously agreed to. The Tenant paid October's rent to the Landlord on September 30, 2011 and the Landlord issued a receipt which stated "for use and occupancy only". The Landlord provided a copy of this receipt in their evidence. The Landlord filed an Application for Dispute Resolution on October 12, 2011.

The Landlord testified that as of the date of the hearing the Tenant was still in the rental unit. The Landlord is requesting an order of possession.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

Analysis

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

I accept the Landlord's evidence that the Tenant was served in person with the One Month Notice to End Tenancy for Cause on August 16, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

The Notice states that the Tenant had ten days to apply for Dispute Resolution, or the tenancy would end on September 30, 2011. The Tenant did not apply to dispute the Notice to End Tenancy within ten days from the date of service. The deadline to do so was August 26, 2011. On August 29, 2011 the Tenant signed a Mutual Agreement with the Landlord which stated that she agreed to vacate the rental unit by September 30, 2011.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on September 30, 2011, which is more than 30 days after the deemed service date of the Notice. Additionally the Tenant signed a Mutual Agreement with the Landlord, in accordance with section 44 (1) (c) of the Act, to end the tenancy on September 30, 2011. Therefore, I find that the Landlord is entitled to an order of possession.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding.

I order that the Landlord retain \$50.00 from the security deposit, in full satisfaction of the claim. The balance of the security deposit must be dealt with in accordance with the Act.

Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep \$50.00 from the security deposit in full satisfaction of the claim. The balance of the security deposit must be dealt with in accordance with the Act.

The order accompanies the Landlord's copy of this decision.

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: November 08, 2011.

Residential Tenancy Branch