



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC, MNR, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated May 29, 2014 and purporting to be effective June 30, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Preliminary Matter

The landlord had amended the original application to add a monetary claim for rent owed.

Section 59(2) of the Act states that an application for dispute resolution must be in the applicable approved form and include full particulars of the dispute that is to be the subject of the dispute resolution proceedings and 59(5) states that the application may be declined if, in the arbitrator's opinion, the application does not disclose a dispute that may be determined or the application does not comply with section 59(2).

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I found that the landlord's monetary claim pertains to a separate and distinct section of the Act that is not connected to the One Month Notice to End Tenancy for Cause.

Accordingly, I find that the monetary portion of this application should be severed and the matter must be dealt with through an application under section 67 of the Act. Therefore the landlord's request for a monetary order is dismissed with leave to reapply

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause?

Background and Evidence Notice to End Tenancy

The landlord testified that a One-Month Notice to End Tenancy for Cause was issued and the tenant did not file an application to dispute the Notice. The landlord is seeking an Order of Possession based on the Notice.

The tenant acknowledged that he has remained living in the rental unit. The tenant also confirmed that he did not file to dispute the Notice nor has he vacated the unit in compliance with the Notice.

Analysis of Issue - Notice to End Tenancy

Under section 47 of the Residential Tenancy Act states that a landlord may end a tenancy by giving One Month Notice if one or more of the following applies:

Section 47 (1)(b) of the Act permits a landlord to issue a One-Month Notice to end Tenancy if the tenant is repeatedly late paying rent; and section 47(1)(h) permits a landlord to terminate a tenancy if the tenant, (i) has failed to comply with a material term, and, (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 does not 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 by that date.

In this instance, the tenant would have to file an application to dispute the Notice within the required 10 days after receiving the Notice. Because the tenant failed to file to dispute the Notice, I find that, an Order of Possession must be issued in favour of the landlord pursuant to the One-Month Notice.

I hereby issue 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 and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I hereby order that the landlord retain a portion of the tenant's security deposit in the amount of \$50.00 to the landlord. This Order must be served on the tenant and can be enforced through an application to Small Claims Court if necessary.

The landlord's monetary claims are severed from this application and are dismissed with leave to reapply

Conclusion

The landlord is successful in the application and is granted an Order of Possession and an order to retain \$50.00 from the tenant's security deposit to reimburse the landlord for the cost of the application.

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: September 09, 2014

Residential Tenancy Branch

