



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This hearing dealt with cross applications. In the Tenants' Application for Dispute Resolution, the Tenant sought an Order cancelling a 1 Month Notice to End Tenancy for Cause issued on June 16, 2015 (the "Notice") as well as recovery of the filing fee. In the Landlord's Application for Dispute Resolution the Landlord sought an Order for Possession, as well authority to retain a portion of the security deposit to recover the filing fee.

The Applicant Tenant, N.N., did not appear at the hearing. Conversely, the Landlord appeared at the hearing.

The hearing was by telephone conference call and was to begin at 9:30 a.m. on August 12, 2015. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Landlord.

As the Applicant Tenant did not attend the hearing by 10:40 a.m., I dismiss his claim without leave to reapply.

The Landlord gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession pursuant to section 55 of the *Act*??
2. Is the Landlord entitled to recover the filing fee pursuant to section 72(2)(b) of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began July 1, 2014. The monthly rent was \$1,200.00. The Tenant paid a security deposit in the amount of \$550.00 and after bringing a pet into the rental unit he paid a \$100.00 pet damage deposit.

The Landlord testified that the tenancy agreement was with the Tenant and his girlfriend M.P.; M.P. was also named on the Notice. However, the Landlord stated that at the time of filing the Application for Dispute Resolution, M.P. had vacated the rental unit such that she was not named in his Application.

The Reasons cited for issuing the Notice were that the Tenants or persons permitted on the property by the Tenants significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Notice was served on the Tenants by attaching to the Rental Unit door on June 16, 2015. Pursuant to section 90, documents served in this manner are deemed served three days later. The Tenant N.N. made his Application on June 17, 2015. As he made his application prior to the three days provided in section 90, I find that he was served as of June 17, 2015.

The Landlord testified that during a discussion with the Tenant on August 6, 2015 the Tenant confirmed he would move from the rental unit by 1:00 p.m. on September 1, 2015. The Landlord confirmed that he was agreeable to this date and asked that the Order of Possession be effective September 1, 2015 at 1:00 p.m.

Analysis

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

The Tenant did not attend the hearing and is 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 effective **1:00 p.m. on September 1, 2015**. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

As the Landlord has been successful, he is entitled to recover the fee paid to file his Application. Pursuant to section 72(2)(b), I Order that he be permitted to retain \$50.00 from the Deposit.

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 and may retain \$50.00 from the Tenants' Deposit to recover the filing fee.

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: August 12, 2015

Residential Tenancy Branch

