



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied an order of possession for the rental unit pursuant to a 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 4, 2015. The landlord supplied the receipt showing the tracking number of the registered mail.

Based upon the submissions of the landlord, I accept that the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and for recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a copy of a written tenancy agreement showing that the tenancy began on May 1, 2014 and monthly rent began at \$750.00.

The landlord submitted that he served the tenant the Notice on October 17, 2015, by registered mail. The Notice listed an effective vacancy date of November 30, 2015.

The cause listed on the Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord submitted a copy of the Notice.

The Notice explained that the tenant had ten (10) days to file an application for dispute resolution at the Residential Tenancy Branch ("RTB") in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The landlord disclosed in the hearing that the tenant died on November 29, 2015; however, the tenant's spouse, children, and grandchildren still live in the rental unit, without paying rent.

I have no evidence before me that the tenant made an application to dispute the Notice.

Analysis

I accept the landlord's undisputed evidence that the tenant was served a 1 Month Notice to End Tenancy for Cause and did not apply to dispute the Notice within ten days of service or at all. I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and that the landlord is entitled to an order of possession for the rental unit effective two (2) days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision pursuant to section 55 of the Act. As the landlord has disclosed that the tenant has since died, I have listed the tenant's estate as an additional responsible party on the order of possession.

To be enforceable, the order of possession must be served on the responsible party and it includes all occupants who reside in the rental unit.

I grant the landlord recovery of his filing fee of \$50.00 and direct him to deduct this sum from the tenant's security deposit of \$400.00 in satisfaction of his monetary award.

Conclusion

The landlord's application for an order of possession for the rental unit and recovery of the filing fee is granted.

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 6, 2016

Residential Tenancy Branch

