



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords on August 11, 2016. The Landlord filed seeking to obtain an Order of Possession for cause and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and their Agent (herein after referred to as Landlords). Each Landlord provided affirmed testimony. The Landlords testified that each Tenant was served notice of this application and this hearing on August 13, 2016 via registered mail. Canada Post tracking receipts were submitted into evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed submissions from the Landlords, I find that each Tenant is deemed served with this application for Dispute Resolution and the Notice of this hearing on August 18, 2016, pursuant to Section 90 of the *Act*. Accordingly, I proceeded to hear the undisputed evidence of the Landlords, in the absence of the Tenants.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?

Background and Evidence

The Landlords testified that the Tenants entered into a written fixed term tenancy agreement which began on September 1, 2015 and was scheduled to end on August 31, 2016. Rent of \$815.00 was payable on the first of each month and on August 26, 2015 the Tenants paid \$412.00 as the security deposit.

The Landlord submitted evidence that the Tenants were served a 1 Month Notice to end tenancy on July 14, 2016 when it was posted to the Tenants' door.

A copy of that 1 Month Notice was submitted into evidence listing an effective date of August 31, 2016. The Notice was issued on the prescribed form, pursuant to Section 47(1) of the Act, listing the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk

The Landlord testified that the Tenants continue to reside in the rental unit and they have not disputed the Notice. As such, they are requesting an Order of Possession for as soon as possible.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlords and corroborated by their evidence.

Upon review of the 1 Month Notice to End Tenancy issued July 14, 2016, I find the Notice was issued and served upon the Tenants in a manner that complies with the Act. The effective date of the Notice was **August 31, 2016**.

Section 47(4) of the Act stipulates 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.

In this case the Tenants are deemed to have received the Notice on July 17, 2016, three days after it was posted to their door. Therefore, the Tenants would have had to file their application for dispute no later than July 27, 2016. At the time the Landlords filed their application for an Order of Possession on August 11, 2016, the Tenants had not made application to dispute the 1 Month Notice.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section 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.

Based on the above, I find the Landlords submitted sufficient evidence to prove the Tenants are conclusively presumed to have accepted the tenancy ended on August 31,

2016 and the Tenants must now vacate the rental unit, pursuant to section 47 of the *Act*. Accordingly, I grant the Landlords' application.

The Landlords have been issued an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

The parties are reminded of the provisions of section 72(2)(b) of the *Act*, which authorizes a landlord to deduct any amount the director orders a tenant to pay to a landlord from the security deposit, which in these circumstances is \$100.00.

Conclusion

The Landlords have been successful with their application. The Landlords have been granted an Order of Possession and authority to withhold \$100.00 from the security deposit as recovery of the filing fee.

This decision is final, legally binding, 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: October 05, 2016

Residential Tenancy Branch