



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL; FF; O

Introduction

This is the Landlord's Application for Dispute Resolution seeking an Order of Possession and "other" orders; and to recover the cost of the filing fee from the Tenant.

This matter was scheduled to be heard at 11:00 a.m., October 4, 2016. The Landlord signed into the Hearing; however, the Tenant did not. The Hearing remained open for 17 minutes.

The Landlord gave affirmed testimony at the Hearing. She testified that she served the Tenant with the Notice of Hearing Documents and copies of her documentary evidence by posting the documents to the door of the rental unit on August 17, 2016.

The Landlord seeks "other" relief; however, she did not provide sufficient details in her Application with respect to what order(s) she is seeking.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlord testified that the Tenant moved into the rental unit on December 15, 2015. She stated that she did not charge rent for December 15, 2015 to December 31, 2015. Monthly rent is \$1,100.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00 at the beginning of the tenancy.

The Landlord testified that served the Tenant with a Notice to End Tenancy for Landlord's Use (the "Notice") by posting the Notice to the door of the rental unit on July 1, 2016. A copy of the Notice was provided in evidence.

Analysis

I accept the Landlord's undisputed affirmed testimony in its entirety.

Further to the provisions of Section 90(c) of the Act, I find that the Tenant was served with the Notice effective 3 days after posting it on the Tenant's door.

The Notice is a 2 Month Notice to End Tenancy for Landlord's Use, and provides an effective date of September 1, 2016. Section 53 of the Act provides:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

Therefore, I find that the effective date of the Notice is September 30, 2016.

I find that the Tenant was served with the Notice of Hearing documents three days after posting the documents to the Tenant's door.

The Tenant did not make application to cancel the Notice to End Tenancy and is therefore conclusively presumed to have accepted that the tenancy ended on September 20, 2016. I find that the Landlord is entitled to an Order of Possession.

The Landlord has been successful in her Application and I find that she is entitled to recover the cost of the \$100.00 filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$100.00 from the security deposit. The remainder of the security deposit must be applied in accordance with the provisions of the Act.

Conclusion

I hereby provide the Landlord with an **Order of Possession effective 48 HOURS AFTER A COPY OF THIS ORDER IS PERSONALLY SERVED ON THE TENANT or 72 HOURS AFTER A COPY OF THIS ORDER IS POSTED ON A DOOR TO THE RENTAL UNIT, WHICHEVER FIRST OCCURS.**

The Landlord may deduct \$100.00 from the security deposit for recovery of the filing fee. The remainder of the security deposit must be applied in accordance with the provisions of the Act.

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: October 04, 2016

Residential Tenancy Branch

