



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on August 23, 2016, a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement and to recover the filing fee.

Only the Landlord's agent, J.L., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

J.L. testified they served the Tenant with the Notice of Hearing and their Application on September 21, 2016 by registered mail. A copy of the registered mail tracking number is reproduced on the unpublished cover page of this my Decision.

Under the Act documents served this way are deemed served five days later. J.L. also testified that he consulted with the online Canada Post package tracking feature and confirmed that the package was retrieved and signed for by the Tenant on September 22, 2016. I find the Tenant was duly served with notice of the hearing and therefore I proceeded in her absence.

Preliminary Matter

J.L. testified that approximately four days after receiving the hearing package from the Branch, he dropped off supporting evidence including the residential tenancy agreement, the utility bills, the letters from the strata as well as evidence of the fines levied. That evidence was not before me.

J.L. further testified that the Tenant has failed to pay rent for October and November 2016.

This hearing was obtained on a priority basis to address the Landlord's request for an Order of Possession based on the Notice.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to the Landlord's other monetary claims. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. Accordingly, I exercise my discretion to dismiss the balance of the Landlord's claims and I grant her leave to reapply.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession?

Background and Evidence

J.L. testified as to the terms of the tenancy as follows: the tenancy began April 15, 2015; monthly rent was payable in the amount of \$2,600.00; and the Tenant paid a security deposit in the amount of \$1,300.00.

J.L. testified that the Tenant began using the rental unit as a short term rental which was contrary to the residential tenancy agreement and the strata bylaws. J.L. further testified that a warning letter was sent to the Tenant November 25, 2015. J.L. stated that despite the Landlord's clear instruction that she was not to use the rental unit as a short term rental the Tenant continued to rent the unit in this manner. On August 23, 2016 the Landlord issued the 1 Month Notice to End Tenancy for Cause (the "Notice").

J.L. testified that he served the Notice on the Tenant by registered mail sent on August 23, 2016. Pursuant to section 90 of the *Act*, documents served in this manner are deemed served five days later; accordingly, I find the Tenant was served the Notice as of August 28, 2016.

The Notice informed the Tenant that she had 10 days in which to apply to dispute the Notice; namely September 7, 2016.

J.L. testified that he was informed by the Branch that the Tenant applied to dispute the Notice but then cancelled her application. A review of the Branch records indicates no such application was made by the Tenant.

Analysis

Based on the documentary evidence, the undisputed testimony of the Landlord's agent, and on the balance of probabilities, I find the following.

The Tenant did not apply to dispute the Notice and is conclusively presumed, pursuant to section 47(5) to accept the end of the tenancy and must vacate the rental unit. The Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* which will be effective at **1:00 p.m.**, 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.

As the Landlord's application had merit, I grant the Landlord the recovery of the \$100.00 filing fee. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit as payment of this amount.

Conclusion

The Landlord is entitled to an Order of Possession. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit as recovery of the filing fee.

This decision is final and binding on the parties, unless 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: November 09, 2016

Residential Tenancy Branch