



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNDERWOOD HOTEL LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

On October 31, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession, and to recover the cost of the filing fee. The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing.

Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and 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.

Preliminary and Procedural Matters

The Tenant testified that her name is spelled wrong in the Landlord's Application. The Tenant testified to the correct spelling of her name.

The Landlord failed to provide the Residential Tenancy Branch a copy of the 1 Month Notice To End Tenancy For Cause. The Landlord testified that he would fax a copy of the 1 Month Notice to the Residential Tenancy Branch immediately.

The Tenant also requested to send a fax copy of the Notice she received from the Landlord because she feels the Notice is improper proper due to the method of service.

The Tenant was advised to send a copy of the 1 month Notice immediately.

I received a copy of the 1 Month Notice from both the Landlord and the Tenant. I find that the Notices are identical except for the details of service. The Notice the Landlord provided indicates the Notice was served in person. The Notice that the Tenant provided indicates that the Notice was served by posting it on the door.

I find that the difference in the details of service within the Notices does not make the Notice invalid. The Landlord testified that the Notice was posted to the door in the hearing, and the Tenant testified she received the Notice that was posted to her door.

Section 52 of the Act states that in order to be effective, a notice to end tenancy must be in writing and must be signed; dated; provide the address of the rental unit; state the effective date of the notice; and be in the approved form.

I find that the 1 Month Notice To End Tenancy for Cause dated September 14, 2016, provided by both parties complies with section 52 of the Act, and is an effective Notice.

Issues to be Decided

- Is the Landlord entitled to an order of possession for cause?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began in June 2016, as a month to month tenancy. Rent in the amount of \$600.00 is payable on the first of each month. The Tenant paid a \$250.00 security deposit.

The Landlord issued a 1 Month Notice to End Tenancy for Cause ("the Notice") by posting it on the Tenant's door on September 14, 2016. The reasons checked off by the Landlord within the Notice are as follows:

Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord

The Notice states the Tenant must move out of the rental unit by October 31, 2016. The Notice informed the Tenant that she has the right to dispute the Notice within 10 days after receiving it. The Notice informed the Tenant that if an application to dispute the Notice is not filed within 10 days, he is presumed to accept the Notice and must move out of the rental unit on the date set out on page 1 of the Notice.

The Tenant testified that she did not dispute the 10 Day Notice because she planned to move out of the rental unit. She testified she needed more time to move out.

The Landlord seeks an order of possession and recovery of the filing fee.

Section 47 (5) of the Act states that if a Tenant who has received a Notice under this section does not make an application for dispute resolution within 10 days after receiving the Notice, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not apply to dispute the 1 Month Notice, 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, pursuant to section 55 of the Act, effective two (2) days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I order that the Landlord can keep the amount of \$100.00 from the Tenant's security deposit in satisfaction of this claim.

Conclusion

The Tenant did not file to dispute the 1 Month Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the 1 Month Notice.

The Landlord is granted an order of possession effective two (2) days after service on the Tenant. I order that the Landlord can keep \$100.00 from the Tenant's security deposit to pay for the Landlord's filing fee.

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: December 16, 2016

Residential Tenancy Branch