



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 the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord and the landlord's agent (collectively the "landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on February 17, 2017, at the rental unit where the tenant is residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on February 17, 2017, the day it was served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that although the submitted tenancy agreement stipulates the tenancy began on February 1, 2017, the tenant was given keys to the unit on January 28, 2017 and signed the agreement on January 30, 2017. Rent in the amount of \$650.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$325.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified that the tenant was personally served with the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), dated January 31, 2017, on the same date. In accordance with section 89 of the *Act*, I find that the tenant was deemed served with the 1 Month Notice on January 31, 2017.

The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant has allowed an unreasonable number of occupants in the unit/site
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's undisputed testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not file an application to dispute the notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the \$325.00 security deposit in full satisfaction of the monetary award. The landlord is cautioned to follow the provisions of section 38 of the *Act* in regards to the remaining \$225.00 security deposit balance.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant.**

I order the landlord to retain \$100.00 of the security deposit and address the remaining security deposit balance in accordance with section 38 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: March 15, 2017

Residential Tenancy Branch