



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, FF

Introduction

On February 21, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for damage to the unit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord K.H. attended the hearing; however the Tenants did not.

The Landlord provided affirmed testimony that she served the Tenants with the Notice of Hearing using express post mail sent on February 24, 2017. She testified that the Tenants never received the Notice of Hearing because the express mail was never picked up. The Landlord did not provide any documentary evidence to support her testimony that the Notice of Hearing was sent using express post.

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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

With respect to service of an application for dispute resolution on a tenant, section 89 (1) of the Act requires that an application must be given by leaving a copy with the person or by sending a copy by registered mail to the address at which the person resides or a forwarding address provided by the tenant.

While I acknowledge the Tenant's submission that express post is considered by the post office to be registered mail, I am not satisfied that it meets the same level of accountability, such as the inclusion of a signature. Therefore, I am not satisfied the Tenants were served with the Notice of Hearing in accordance with the requirements of the Act.

The Landlords' monetary claims are dismissed with leave to reapply.

The hearing proceeded on the issue of whether the Landlord is entitled to an order of possession based on the issuance of a 1 Month Notice To End Tenancy For Cause.

Issues to be Decided

- Is the Landlord entitled to an order of possession based on the issuance of a 1 Month Notice To End Tenancy For Cause?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy commenced on August 1, 2013. The Tenants pay the Landlord monthly rent in the amount of \$1,450.00. The Tenants paid the Landlord a security deposit of \$725.00.

The Landlord testified that she issued the Tenants a 1 Month Notice To End Tenancy For Cause dated January 29, 2017. The 1 Month Notice has an effective date of February 28, 2017. The Landlord testified that she served the 1 Month Notice to the Tenants by sending it to them using express post on January 31, 2017. The Landlord testified that she knows the Tenants received the 1 Month Notice because they have acknowledged receiving it.

The Notice informed the Tenants that they have the right to dispute the Notice within 10 days after receiving it. The Notice informed the Tenants that if an application to dispute the Notice is not filed within 10 days, they are presumed to accept the Notice and must move out of the rental unit on the date set out on page 1 of the Notice.

There is no evidence before me that that the Tenants made an application to dispute the Notice.

The Landlord testified that the Tenants have agreed to move out of the rental unit on March 31, 2017.

The Landlord referred to the documentary evidence she provided of a letter the Landlords received from the Tenants dated February 15, 2017, in which the Tenants acknowledge receiving the notice to end tenancy and agree to move out for March 31, 2017.

The Landlord is seeking an order of possession for March 31, 2017.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants received the 1 Month Notice To End Tenancy For Cause dated January 29, 2017, and did not apply to dispute the Notice. The Tenants are, 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 Tenants did not receive the 1 Month Notice until sometime in February 2017. Therefore the effective date of the 1 Month Notice automatically corrects to be March 31, 2017.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at 1:00 pm on March 31, 2017, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to pay the Landlord the \$100.00 fee that the Landlords 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 Tenants received a 1 Month Notice to End Tenancy For Cause and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlords are granted an order of possession effective at 1:00 pm on March 31, 2017, and I order that the Landlords can keep \$100.00 from the Tenant's security deposit to pay for the Landlords' filing fee.

The Landlords have leave to reapply for their monetary claims.

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 21, 2017

Residential Tenancy Branch