



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF; MT, CNC, 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not participate in the conference call hearing to present his claim; consequently the tenant's entire application is dismissed without leave to reapply.

The landlord's agents (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 landlords confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that the tenant was served with a copy of the application and the hearing package on March 20, 2017 by registered mail to the rental unit. The landlord provided the Canada Post tracking number into oral evidence to verify this method of service; this number is detailed on the front page of this decision. The Canada Post website shows that the documents were received and signed for on April 4, 2017. Therefore, based on the undisputed evidence before me, I find the tenant was served pursuant to Section 89(1) (c) of the *Act*.

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 the landlord assumed this tenancy in May of 2015, when the landlord took over the management of the property from the owner. The landlord did not receive a tenancy agreement from the owner and did not enter into a new tenancy agreement with the tenant in May of 2015. The landlord testified that the tenancy is based on a month to month basis with rent in the amount of \$771.75 payable on the first of each month. The tenant remitted a security deposit in the amount of \$375.00 at the start of tenancy, which the landlord still retains. The tenant continues to reside in the rental unit.

On February 22, 2017 the landlord served the 1 Month Notice by way of registered mail to the rental unit where the tenant resides. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 88 and 90 of the *Act*, I find that the tenant has been deemed served with the 1 Month Notice on February 27, 2017, the fifth day after its registered mailing.

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

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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 or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant

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.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and

the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

As the Notice complies in form and content and as the tenant's application has been dismissed I find that the landlord is entitled to an order of possession. I therefore grant an order of possession to the landlord.

The landlord's application was not required as section 55 of the *Act* obligates the director to grant the landlord an order of possession if the director dismisses the tenant's application or uphold the landlord's notice. Therefore I find the landlord is not entitled to recover the cost of the \$100.00 filing fee.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's application for an order of possession is granted effective two (2) days after service on the tenant.

The landlord's application to recover the filing fee is dismissed without leave to reapply.

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: April 19, 2017

Residential Tenancy Branch