



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

On April 4, 2017, 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 attended the teleconference hearing; however, the Tenants did not. The Landlord testified that she served both Tenants with the Application for Dispute Resolution and Notice of Hearing, by registered mail sent on April 10, 2017. A Canada Post tracking number was provided as evidence of service. I find that the Tenants have been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the Residential Tenancy Act (the Act).

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

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 Landlord testified that the tenancy began on December 1, 2015. Rent in the amount of \$823.00 is to be paid on the first day of each month. The Tenant paid the Landlord a \$400.00 security deposit and a \$400.00 pet damage deposit.

The Landlord issued a 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") by posting it on the Tenant's door on March 16, 2017. The reason checked off by the Landlord within the Notice is:

- *Tenant is repeatedly late paying rent*

The 1 Month Notice states the Tenants must move out of the rental unit by April 30, 2017. The Notice informed the Tenants of 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 the Tenants made an application to dispute the 1 Month Notice.

The Landlord testified that the Tenants have not paid the rent for the month of May 2017.

The Landlord seeks an immediate order of possession.

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 in accordance with subsection (4), 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 on a balance of probabilities, I find that the Tenants received the 1 Month Notice and did not apply to dispute the Notice, and 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 Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two (2) days 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 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 Tenants did not apply to dispute the 1 Month Notice To End Tenancy For Cause dated March 16, 2017. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two days after service on the Tenants, and 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: May 12, 2017

Residential Tenancy Branch