



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened to deal with an application by the landlord under the *Residential Tenancy Act* (the “Act”) for an order of possession and authorization to recover the application filing fee. The relief sought by the landlord was based on a 1 Month Notice to End Tenancy for Cause dated March 31, 2017 (the “1 Month Notice”).

The landlord, an agent (who was also named as a landlord) and a witness attended the hearing on behalf of the landlord. One of the tenants (the male tenant) also attended. Both parties had opportunity to be heard, to present affirmed testimony, to make submissions and to present documentary evidence.

At the outset of the hearing the agent advised that on May 15, 2017 she had applied for an order of possession by direct request based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”). Although that application appears to have been successful, I will nevertheless decide this application.

Service of the landlord’s application and notice of hearing was not at issue, as the tenant acknowledged having received these by email. The landlord’s agent stated that these, along with supporting evidence, were also sent to the tenants and the rental unit address by registered mail and receipts were included in evidence. However, the tenant stated that he had not received the registered mail package.

Issues to be Decided

Is the landlord entitled to an order of possession based on the 1 Month Notice?

Is the landlord entitled to recover the application filing fee?

Background and Evidence

It was agreed that the this tenancy began on February 1, 2017 for a one year term ending January 31, 2017 with a monthly rent of \$2000.00 due on the first of the month. A security deposit of \$1,000.00 was paid at the beginning of the tenancy.

The landlord's agent testified that she served the male tenant with the 1 Month Notice on March 31, 2017 by attending at the rental unit with the landlord and the property manager and by sending it by email. She further testified that the three of their party and the tenant had an argument at that time, and that the police were called because the tenant was threatening. The tenant agrees the police attended but he says that he called them because the landlord and the others were harassing him. The agent stated that when the tenant opened his door to the police the officer pointed out the 1 Month Notice that the agent had posted to the door.

The agent also testified that she sent the 1 Month Notice to the female co-tenant by email, and that the co-tenant acknowledged receipt but advised she was no longer residing in the unit and asked that she direct future correspondence to the male tenant.

The tenant says that no such notice was posted to his door on March 31, 2017 and that he did not receive it by email either. He says that he did not receive the 1 Month Notice until about April 14, 2017 when he found it posted to his door after returning from a work trip out of town. The tenant further says that this 1 Month Notice had only one page.

The landlord's witness was present on March 31 and testified that both pages of the 1 Month Notice were posted on the door of the rental unit. He referred me to a cell phone photograph showing both pages that he understood was in evidence but was not.

The tenant acknowledged receipt of the 10 Day Notice that was later served on him. He has not filed to dispute that notice.

The tenant has not applied to dispute the 1 Month Notice. He said that his lawyer advised him that he did not need to dispute the 1 Month Notice because this hearing was already scheduled.

Analysis

Based on the testimony of the landlord's witness and the agent I find on a balance of probabilities that the tenant was served with both pages of the 1 Month Notice. I find that the notice was posted on March 31, although the tenant may not have reviewed it until mid-April, when he returned from away. I accept the witness' evidence that the notice posted consisted of two pages. I also accept the agent's testimony that the female tenant also received the 1 Month Notice.

Additionally, I conclude that the tenant's failure to file to dispute the 1 Month Notice was not the result of its missing the second page, which alerts the recipient to the time lines for filing, but the result of advice from his lawyer.

Section 47(1) of the Act allows a landlord to end a tenancy for cause where the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Unless the tenant agrees that the tenancy will end, the tenant must dispute a notice under this section by filing an application within 10 days of receipt. The tenant has not done so. Accordingly, the tenant is conclusively presumed to have accepted that the tenancy ended on April 30, 2017, the effective date of the 1 Month Notice.

I grant two (2) day order of possession in favour of the landlord pursuant to s. 55(2)(b) of the Act.

As the landlord's application is successful I award the landlord the application filing fee and authorize the landlord to retain \$100.00 of the security deposit in full satisfaction of this amount.

Conclusion

The landlord's application is allowed. The landlord is granted a two (2) day order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: May 31, 2017

Residential Tenancy Branch