



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 an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession pursuant to a notice to end tenancy for cause and for a monetary order for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant acknowledged receipt of evidence submitted by the landlord. The landlord agreed that some documents that formed part of her evidence were not served on the tenant. Accordingly, those documents were not used in the making of this decision. Both parties gave affirmed testimony.

Issues to be decided

Did the landlord serve a valid notice to end tenancy? Does the landlord have cause to end the tenancy? Did the tenant apply to dispute the notice?

Background and Evidence

The tenancy started on March 01, 2015. The monthly rent is \$1,750.00 due in advance on the first day of each month. Prior to moving in the tenant paid a security deposit of \$825.00.

On August 08, 2017, the landlord served the tenant with a one month notice to end tenancy for cause with an effective date of September 30, 2017, by registered mail. The landlord filed evidence to support service of the notice to end tenancy for cause. The landlord's evidence indicates that the notice was unclaimed.

The tenant stated that she lost the key to her mail box sometime in August and had it replaced on October 12, 2017, at which time she received the notice to end tenancy for cause. The tenant stated that the time frame to dispute the notice had expired and therefore she did not make application to dispute the notice.

Since the tenant did not dispute the notice and did not move out on effective date of the notice, the landlord applied for an order of possession.

Analysis

Based on the testimony of both parties, I find that the tenant was served with a valid two page notice to end tenancy for cause on August 08, 2017, by registered mail. Pursuant to section 90 of the *Residential Tenancy Act*, the tenant is deemed to have received it on August 13, 2017.

Based on the testimony of the landlord and the copy of the tracking slip filed into evidence, I find that the landlord mailed the notice to end tenancy for cause on August 08, 2017, to the address of the rental unit where the tenant receives mail at.

Residential Tenancy Policy Guideline No. 12 provides that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

The tenant testified that she lost the key to her mailbox “sometime” in August 2017. The tenant was not sure of the date she lost the key but stated that it was around the time the landlord mailed the notice to end tenancy for cause. The tenant further stated that she got a new key on October 12, 2017.

Based on the tenant's testimony, I find on a balance of probabilities that it is more likely than not that the tenant did not lose her mail box key in August. Even if I accept her testimony, I find that it was her responsibility to have the key replaced as soon as possible and not wait for two months to gain access to her mail box.

Based on the landlord's evidence and pursuant to section 89 and 90 of the *Act*, I find that the tenant has been deemed served with the notice to end tenancy for cause on August 13, 2017, 5 days after the mailing of the notice. The effective date of the notice is September 30, 2017.

Pursuant to section 47 (5) of the *Residential Tenancy Act*, if a tenant has received a notice to end tenancy for cause and does not make an application for dispute resolution within ten days after receiving the notice, the tenant is conclusively presumed to have

accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Therefore, the landlord is entitled to an order of possession and pursuant to section 55(2); I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Since the landlord's application has been granted, I award the landlord the recovery of the filing fee. The landlord may retain \$100.00 from the security deposit.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant.

The landlord may retain \$100.00 from the security deposit towards the recovery of the 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: November 22, 2017

Residential Tenancy Branch