



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDLS, MNRLS, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order pursuant to section 67; and
- an order allowing the landlord to recover the cost of the filing fee pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord gave written evidence and sworn oral testimony that copies of the landlord's dispute resolution hearing package was sent to the tenant by registered mail on November 30, 2017. The landlord entered into written evidence copies of the tracking slips, including the Canada Post Tracking Number, showing that the tenant did not pick up the package and was returned to the landlord. In accordance with section 89 and 90 of the *Act*, I am satisfied that the tenant was deemed served with the landlord's dispute resolution hearing package five days after he sent it by registered mail.

Preliminary issue

At the outset of the hearing the landlord advised that he would be seeking the costs associated to clean and repair the unit and any possible lost rent. As the tenant is still in the unit I find that the landlord is premature in his monetary claim and I therefore dismiss this portion of his application with leave to reapply. This was explained to the landlord in detail and he advised that he understood.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to a One Month Notice to End Tenancy for Cause?

Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on or about June 1, 2012. Rent in the amount of \$1050.00 is payable in advance on the first day of each month. The tenant provided a security deposit of \$525.00. The landlord issued a One Month Notice to End Tenancy for Cause on September 15, 2017 with an effective date of October 31, 2017 for the following reason: *"Tenant is repeatedly late paying rent."*

The landlord testified that the tenant has paid the rent late six times since May 2017 for the months of May, June, July, August, September and October. The landlord testified that the tenant has been late 35 times in paying the rent during this tenancy. The landlord testified that he has attempted to work with the tenant but with no improvement. The landlord requests an order of possession.

Analysis

When a landlord issues a notice under section 47 of the Act they must provide sufficient evidence to justify the issuance of that notice. Residential Tenancy Policy Guideline 38 addresses the issue before me as follows:

"The Residential Tenancy Act¹ and the Manufactured Home Park Tenancy Act² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments."

Based on the undisputed testimony of the landlord and the supporting documentation, the landlord has provided sufficient evidence to support his position that the tenancy must end. The landlord is granted an order of possession pursuant to section 55 of the Act.

The One Month Notice to End Tenancy is of full effect and force. The tenancy is terminated. As the landlord has been successful in this application, he is entitled to the recovery of the filing fee. The landlord is entitled to retain \$100.00 from the security deposit in full satisfaction of that claim.

Conclusion

The landlord is granted an order of possession. The tenancy is terminated.

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: February 14, 2018

Residential Tenancy Branch