



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect, and to recover the filing fee from the tenant for the cost of the application.

The landlord and an agent for the landlord attended the hearing and each gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. The landlord testified that he served the tenant personally with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) on February 22, 2018. The landlord's agent testified that he was present when the Hearing Package was served and took photographs, which have been provided as evidence for this hearing. I accept the testimony, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 15, 2018 and the parties entered into a written tenancy agreement for a tenancy beginning on March 23, 2018, and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month, however the tenant has not paid any rent since moving in. On January 23, 2018 the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that on February 6, 2018 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided as evidence for this hearing. It is dated February 6, 2018 and contains an effective date of vacancy of February 16, 2018 for unpaid rent in the amount of \$1,233.35 that was due on February 1, 2018. Someone helped the landlord calculate it and the amount was pro-rated, however the tenant has not paid any rent for January, February or March, 2018.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the landlord seeks an Order of Possession. The landlord made the application for an early end to the tenancy as a result of disturbances caused by the tenant or the tenant's guests and police presence at the rental unit.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I accept the undisputed testimony of the landlord that the tenant has not paid any rent. Further, I accept the undisputed testimony of the landlord that the tenant has not served the landlord with an Application for Dispute Resolution, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

The landlord has not applied for a monetary order for the unpaid rent, or for an order permitting the landlord to keep the security deposit, and therefore I make no orders with respect to those issues. However, since the landlord has been successful with this application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in that amount.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: March 28, 2018

Residential Tenancy Branch