



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

On February 1, 2018, 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 and Tenant attended the hearing. Both parties provided affirmed testimony. The Landlord and Tenant were provided the opportunity to present their 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 parties testified that the tenancy began in September 2011. Rent in the amount of \$550.00 is to be paid by the 30th day of each month. The Tenant paid the Landlord a security deposit of \$225.00. The Landlord provided a copy of the tenancy agreement.

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 January 2, 2018. The reason checked off by the Landlord within the Notice is:

- *Tenant is repeatedly late paying rent*

The 1 Month Notice states the Tenant must move out of the rental unit by January 31, 2018. The Notice informed the Tenant 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.

The Tenant initially claimed that she never received the 1 Month Notice To End Tenancy For Cause dated January 2, 2018. Later in the hearing, after both Landlords provided testimony that they personally posted the Notice on the Tenant's door and took a photograph, the Tenant acknowledged that she received the 1 Month Notice To End Tenancy For Cause that was posted to her door.

The Tenant was asked why she never disputed the Notice and she responded by stating she has only been late paying the rent on a couple of occasions. The Tenant testified that she does not have a place to move to.

The Landlord testified that the rent for April 2018, has not been paid and she 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 Tenant received the 1 Month Notice on January 5, 2018 which is the third day after it was posted to her door, and did not apply to dispute the Notice. I find that the time for making an application has expired and the Tenant is 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 Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

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 Tenant did not apply to dispute the 1 Month Notice To End Tenancy For Cause dated January 2, 2018. The Tenant is 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 Tenant, 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: April 03, 2018

Residential Tenancy Branch