



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

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

- an Order of possession based on unpaid rent pursuant to sections 46 and 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for 13 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she served the tenant with the dispute resolution package by registered mail on April 26, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on May 1, 2018, 5 days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed evidence that this tenancy began on March 5, 2004 and is currently ongoing. Monthly rent in the amount of \$350.00 is payable on the first day of each month. The landlord did not know if the tenant paid a security deposit or pet damage deposit.

The landlord testified that the tenant did not pay rent on April 1, 2018, when it was due. On April 13, 2018, the landlord posted a 10 Day Notice to End Tenancy (the "10 Day Notice") on the tenant's door, effective April 23, 2018. The landlord testified that the tenant paid rent in the amount of \$350.00 on April 19, 2018.

Analysis

As the landlord provided undisputed testimony that the 10 Day Notice was posted on the tenant's door on April 13, 2018, I find that the tenant is deemed to have received the 10 Day Notice on April 16, 2018, 3 days after its posting, in accordance with sections 88 and 90 of the *Act*. Section 53 of the *Act* allows a notice to end tenancy that has an incorrect effective date to self-correct to the correct date. In this case, the corrected effective date of the 10 Day Notice is April 26, 2018.

Section 46(4) of the *Act* states that if within five days after receiving a 10 Day Notice, the tenant pays the overdue rent, then the notice has no effect.

In this case, the tenant paid the overdue rent on April 19, 2018, three days after she was deemed to have received the 10 Day Notice. Therefore the 10 Day Notice has no effect.

Conclusion

I dismiss the landlord's application without leave to reapply.

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: June 7, 2018

Residential Tenancy Branch