



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), for an order of possession, for a monetary order for money owed and an order to recover the cost of filing the application from the tenant.

The landlord, and the landlord’s agents attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 17, 2018, a Canada post tracking number was provided as evidence of service. The Canada post history show that the tenant signed for the package on October 2, 2018. I find the tenant was served on October 2, 2018, in accordance with the Act. The tracking number is noted on the covering page of this decision.

The landlord and the landlord’s agents appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for money owed?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Based on the testimony of the landlord's agents, I find that the tenant was served with a One Month Notice to End Tenancy for Cause (the "Notice"), issued on July 25, 2018, by registered mail sent on July 27, 2018. A Canada post tracking number was provided, which has been noted on the covering page of this decision. Filed in evidence is a copy of the Notice.

The Canada post history shows the tenant was given two (2) notices by Canada post to pick up the package. The tenant's did not attend to pick up the packages and it was returned unclaimed. I find the tenant was deemed served five (5) days after it was mail.

Refusal or neglect to pick up the packages does not override the deemed services under the Act.

The Notice explains the tenant had ten days to dispute the Notice. The Notice further explains if the Notice is not disputed within the ten days that the tenant is presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice

The landlord's agents testified that the tenant signed a form k, to comply with the strata by-laws. The agents stated that the tenant failed to comply and the landlord received by-law fines totalling \$1,000.00. Filed in evidence are documents of violations, and copies of payments made by the landlord for violations.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant did not apply to dispute the Notice and 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 the tenancy legally ended on August 31, 2018, and the tenant is overholding the premise as an occupant.**

Since the landlord did accept rent for the month of October 2018, I find that the landlord is entitled to an order of possession effective **October 31, 2018 at 1:00 pm**. A copy of this order must be served 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.

Further, I accept the undisputed evidence that the tenant was responsible for the strata fines. This is supported by the form K, and the documentary evidence submitted. I find the tenant has breached the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount of fines in the amount of **\$1,000.00**.

I find that the landlord has established a total monetary claim of **\$1,100.00** comprised of the above amount and to recover the filing fee from the tenant for this application.

I order that the landlord to retain the tenant's security deposit of **\$800.00** in partial satisfaction of the claim. The landlord is granted a formal order for the balance due in the amount of **\$300.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to dispute the Notice. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep a portion of the security deposit in partial satisfaction of the claim. The landlord is granted a monetary order for the balance due.

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: October 26, 2018

Residential Tenancy Branch