



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL, FFL

Introduction

This hearing dealt with applications from the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applies for:

- An order of possession for landlord's use of property pursuant to sections 49 and 55; and
- Authorization to recover the filing fee for this application from the tenants pursuant to Section 72.

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. The tenant did not attend this hearing, although I left the teleconference hearing connection open for ten minutes to enable the tenant to call into this hearing. I confirmed the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system the landlord and I were the only ones who had called into this teleconference.

The landlord testified the Notice of Hearing and the landlord's documents were served on the tenant on July 6, 2018 by registered mail. The landlord provided copies of the Canada Post Customer Receipts containing the tracking numbers. I find the tenants are deemed served with the documents on July 11, 2018, the 5th day after mailing, pursuant to Section 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for landlord's use?
2. Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts.

The tenancy began on October 1, 2017 for \$800.00 monthly rent payable on the first of the month. A security deposit of \$400.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. A copy of the agreement was submitted in evidence.

The landlord testified the Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice"), citing the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse), was personally served on the tenant on April 30, 2018 with an effective date of June 30, 2018. A copy of the Two Month Notice was submitted as evidence which is undated. A Proof of Service document was submitted as evidence signed by a witness to the personal service.

The parties entered into a second agreement for the same unit commencing July 1, 2018 for \$800.00 monthly rent payable on the first of the month. Other than the commencement date, the agreement is identical to the first tenancy agreement. A copy of the agreement was submitted in evidence.

The landlord testified the tenant did not file an application to dispute the Two Month Notice. The landlord testified the tenant did not pay rent for the months of July and August 2018 and continues to reside in the premises.

Analysis

The landlord provided undisputed evidence at this hearing as the tenant did not attend. I find that the tenant was duly served with the Two Month Notice on April 30, 2018. I accept the landlord's evidence that the tenant did not dispute the Two Month Notice within 15 days.

I find the second tenancy agreement dated July 1, 2018, in effect cancelled the undated Two Month Notice served April 30, 2018 as it appears the parties entered into a new agreement which is ongoing.

Section 52 of the *Act* states that a Two Month Notice be dated:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed **and dated by the landlord** or tenant giving the notice,

(b) ...

(e) when given by a landlord, be in the approved form.

[emphasis added]

The landlord's Two Month Notice is not dated and I therefore find it does not comply with section 52.

I therefore dismiss the landlord's application with leave to reapply.

As the landlord's application is dismissed, I do not grant the landlord reimbursement of the filing fee.

Conclusion

The landlord's application is dismissed with 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: September 19, 2018

Residential Tenancy Branch