



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's three agents (collectively the "landlord") and the tenant attended the hearing. Each party was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

As per the testimony of the parties, the tenancy began on September 1, 2010 on a month-to-month basis. Rent in the amount of \$472.00 is payable on the first day of each month. The tenant remitted a security deposit in the amount of \$183.50 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The landlord testified that the tenant was personally served with the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), dated September 25, 2018, on the same date. The 1 Month Notice indicates an effective move-out date of October 31, 2018. The tenant confirmed receipt of the 1 Month Notice on September 25, 2018. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord testified that despite attempts to assist the tenant, the tenant continues to hoard items within the rental unit. The tenant did not dispute the landlord's claim.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. Although the tenant participated in the hearing, the tenant did not file an application to dispute the notice within 10 days. Therefore the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the \$183.50 security deposit in full satisfaction of the monetary award. The landlord is cautioned to follow the provisions of section 38 of the *Act* in regards to the remaining \$83.50 security deposit balance.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I order the landlord to retain \$100.00 of the security deposit and address the remaining security deposit balance in accordance with section 38 of the *Act*.

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: December 06, 2018

Residential Tenancy Branch