



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, 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 unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's two agents attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on November 20, 2018 he personally served the hearing package to the tenant. The landlord provided a signed proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the hearing package on November 30, 2018, the date it was personally served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

Background and Evidence

The landlord assumed this tenancy when the landlord purchased the property from the former landlord. As per the submitted tenancy agreement, and testimony of the landlord, the tenancy began on March 1, 2016 on a fixed term until February 28, 2017 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$930.00 is payable on the last day of each month. The tenant remitted a security deposit in the amount of \$447.50 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 on October 17, 2018 he personally served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") to the tenant. The landlord provided a signed proof of service, with the landlord's application. Based on the testimony of the landlord and in accordance with sections 88 and 90 of the *Act*, I find that the tenant has been deemed served with the 10 Day Notice on October 17, 2018, the day it was personally served.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended 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. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended 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 \$447.50 security deposit in full satisfaction of the monetary award.

Conclusion

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

The landlord is entitled to \$100.00. I order the landlord to retain \$100.00 from the security deposit in full compensation of this amount.

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: January 11, 2019

Residential Tenancy Branch