



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC

Introduction

This hearing was convened by way of conference call. The Landlord had filed an Application for Dispute Resolution on November 27, 2018 (the "Application"). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 29, 2018 (the "Notice"). The Landlord also sought reimbursement for the filing fee.

The Landlord and Manager appeared at the hearing. The Tenant did not appear for the hearing which lasted 28 minutes. I explained the hearing process to the Landlord and Manager who did not have questions when asked. The Landlord and Manager provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Manager testified that she taped the hearing package to the door of the rental unit on November 28, 2018. The Landlord submitted a Proof of Service in relation to this; however, it is not signed by a witness or otherwise confirmed.

The Manager testified that she also taped the Landlord's evidence to the door of the rental unit later in the day on November 28, 2018. The Landlord did not submit evidence in relation to this.

Based on the undisputed testimony of the Manager, I find the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(g) and 89(2)(d) of the *Residential Tenancy Act* (the "Act") and rule 3.1 of the Rules of Procedure.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and Manager were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Landlord and Manager. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord had made a previous Application for Dispute Resolution which was heard in November of 2018. The Landlord had not submitted a copy of the tenancy agreement for this file but had for the previous file. The file number is noted on the front page of this decision for reference. I reviewed the tenancy agreement submitted on the previous file with the Landlord and Manager who confirmed it is accurate.

The tenancy agreement is a written agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started February 1, 2018 and is a month-to-month tenancy. Rent is \$500.00 per month. The Landlord and Manager advised rent is due on the first day of each month. The agreement is signed by the Landlord and Tenant.

The Landlord had not submitted a copy of the Notice for this file but had for the previous file. I reviewed the Notice submitted on the previous file.

The Notice is addressed to the Tenant and relates to the rental unit. It is signed and dated by the Manager. It has an effective date of September 29, 2018. The grounds for the Notice are that:

1. Tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and

- c. Put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
- a. Damage the landlord's property;
 - b. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; and
 - c. Jeopardize a lawful right or interest of another occupant or the landlord.

The Manager testified that she taped the Notice to the door of the rental unit on September 29, 2018.

The Manager was not aware of the Tenant ever disputing the Notice.

The Manager testified that the Tenant has paid rent until the end of December 2018 and has not paid rent for January. The Landlord sought an Order of Possession effective two days after service on the Tenant.

I note that I have only reviewed the tenancy agreement and Notice from the previous file. I have not relied on any further evidence from the previous file as, in my view, any evidence relied on by the Landlord for this file should have been submitted in relation to this file and served on the Tenant as evidence for this hearing. I have considered the tenancy agreement because of the nature of the document. This is something the Tenant would have been aware of given he signed it. I have considered the Notice because I am satisfied it was served on the Tenant and am satisfied he would have understood the relevance of the Notice to this Application.

Analysis

The Landlord was permitted to serve a notice to end tenancy on the Tenant pursuant to section 47(1)(d) and (e) of the *Act* based on the grounds listed in the Notice.

Based on the undisputed testimony of the Manager about service of the Notice, I find the Tenant was served with the Notice in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice on October 2, 2018.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

The Tenant had 10 days from receiving the Notice on October 2, 2018 to dispute it under section 47(4) of the *Act*. I accept the undisputed testimony of the Manager that she is not aware of the Tenant disputing the Notice. I have no evidence before me that the Tenant did. I am satisfied the Tenant did not dispute the Notice.

Therefore, pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended November 30, 2018, the corrected effective date of the Notice. I note that the effective date written on the Notice does not comply with section 47(2) of the *Act* and therefore is automatically corrected under section 53 of the *Act*. The Tenant was required to vacate the rental unit by November 30, 2018.

I do not find it necessary to determine whether the Landlord in fact had grounds to issue the Notice as the Tenant did not dispute it and therefore the conclusive presumption set out in section 47(5) of the *Act* applies.

I find the Landlord is entitled to an Order of Possession. The Landlord sought an Order of Possession effective two days after service on the Tenant. I find this appropriate given the Notice was effective November 30, 2018 and the Tenant has failed to pay rent for January. I issue the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55 of the *Act*.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order in the amount of \$100.00.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court. As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee and issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 10, 2019

Residential Tenancy Branch