



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlords sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause, issued on November 13, 2018, as well as recovery of the filing fee.

Only the Landlords' agents, A.G. and J.G. called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. Also introduced in evidence was a letter from the Landlord, A.D., authorizing J.G. and his company to act as her agent.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:13 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords' agents and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. Introduced in evidence was confirmation that the Notice of Hearing and the Application were served on the Tenant by registered mail on December 5, 2018. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 10, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' Agents' submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlords' Agents confirmed that the Tenant vacated the rental unit as of December 31, 2018 such that an Order of Possession was no longer required.

Issue to be Decided

1. Are the Landlords entitled to recover the filing fee?

Background and Evidence

Evidence submitted by the Landlords confirmed that the tenancy began April 15, 2017. Monthly rent at the time the tenancy began was \$1,300.00.

The Landlords issued the Notice due to allegations that the Tenant was smoking in the rental unit contrary to the Landlords' strict no smoking policy which was communicated to the Tenant by notice dated February 27, 2018 (a copy of which was provided in evidence).

Also introduced in evidence was a proof of service which confirmed that the Notice was posted to the rental unit door on November 14, 2018.

The Tenant did not apply to dispute the Notice.

While the Tenant vacated the rental unit on December 31, 2018, this was only after the Landlord had applied for Dispute Resolution and paid the \$100.00 filing fee.

Analysis

After consideration of the undisputed testimony and evidence before me and on a balance of probabilities I find as follows.

Section 72 of the *Act* allows me to make an Order for the repayment of the filing fee and reads as follows:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59

(2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant

I find that the Tenant vacated the rental unit, but only after the Landlord applied for Dispute Resolution seeking an Order of Possession. I therefore find the Landlords are entitled to recover the \$100.00 filing fee.

Pursuant to section 72(2)(b) I authorize the Landlords to retain \$100.00 of the Tenant's \$650.00 security deposit as repayment of the filing fee. The balance of the Tenant's deposit in the amount of \$550.00 shall be dealt with in accordance with the *Act*.

Conclusion

The Landlords are entitled to retain \$100.00 from the Tenant's security deposit as recovery of the filing fee.

As the Tenant vacated the rental unit on December 31, 2018, an Order of Possession was not required.

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 16, 2019

Residential Tenancy Branch