



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding POWELL HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “Act”) to enforce a One Month Notice to End Tenancy for Cause, (the “Notice”) dated November 7, 2018, and to recover the filing fee for his application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 47 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

The Tenancy agreement shows that this tenancy started on April 1, 2017, as seven-month fixed term tenancy. Rent in the amount of \$580.00 is to be paid by the first day of each month, and that the Tenant paid the Landlord a \$340.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

Landlord testified that he served the Notice to the Tenant on November 7, 2018, by attaching it to the Tenant's door or other conspicuous place. The Notice indicated an end of tenancy date of December 31, 2018.

The Landlord testified that the Tenant had not disputed the Notice or moved out in accordance with the Notice.

The Tenant agreed that he had not disputed the Notice and that he had not moved out in accordance with the Notice.

The Landlord testified that the Tenant has paid the rent until the end of March 2019 and that he is seeking an order of possession dated March 31, 2019.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

Landlord's notice: cause

47 (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

I find that the Tenant was deemed to have received the Notice to end the tenancy on November 10, 2018, three days after the Notice had been posted to his door. Pursuant to section 47(8) the *Act*, the Tenant had 10 days to dispute the Notice. Consequently, the Tenant had until November 20, 2018, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In this case, I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired. Therefore, pursuant to section 47(5a) I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

Section 55(2b) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

The Landlord is therefore entitled to an Order of Possession pursuant to section 55(2) of the *Act*. I grant the Landlord an Order of Possession effective not later than 1:00 p.m. on March 31, 2019. Should the Tenant fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

I find that the Tenant did not dispute the Notice and is therefore presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on March 31, 2019. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I grant permission to the Landlord to keep **\$100.00** from the security deposit for this tenancy, in full satisfaction of the award contained in my decision.

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: March 18, 2019

Residential Tenancy Branch