



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, MND, MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a one month notice to end tenancy for cause. The landlord also applied for a monetary order for damages and for the filing fee.

The landlord testified that she served the tenant with the notice of hearing and evidence package by courier on June 20, 2019. The landlord filed a copy of the tracking history which indicates that the tenant picked up the package on June 24, 2019 and signed in acknowledgement of having received it. Despite having been served a notice of hearing by the landlord, the tenant did not attend the hearing.

The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the landlord has applied for a monetary order for damages and to retain the security deposit. Since the tenancy has not yet ended and the landlord has not had the opportunity to provide accurate information on the damages she is seeking and since these sections of the landlord's application are unrelated to the main section which is to obtain an order of possession, I dismiss these sections of the landlord's claim with leave to reapply.

Accordingly this hearing only dealt with the landlord's application for an order of possession and for the recovery of the filing fee.

Issues to be decided

Is the landlord entitled to an order of possession and to the recovery of the filing fee?

Background and Evidence

The tenancy started on July 02, 2018. The monthly rent is \$1,270.00. Prior to moving in, the tenant paid a security deposit of \$600.00. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

Copies of the tenancy agreement and the addendum were filed into evidence. The addendum clearly states that smoking is not permitted inside the rental unit. The landlord stated that despite warnings to the tenant, the smoking inside the rental unit continued. The landlord stated that the smoke affected the health of her son who suffers from Asthma.

On May 23, 2019, the landlord served the tenant with a notice to end tenancy for cause with an effective date of June 30, 2019.

The tenant did not dispute the notice. The landlord has applied for an order of possession effective two days after service on the tenant.

Analysis

Based on the undisputed testimony and documentary evidence of the landlord, I find that the tenant is deemed to have received the notice to end tenancy, on May 28, 2019 and did not make application, pursuant to Section 47 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Since the landlord has proven her case, I award the landlord the recovery of the filing fee. The landlord may retain \$100.00 from the security deposit.

Conclusion

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

The landlord may retain **\$100.00** from the security deposit towards the recovery of the filing fee.

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: August 08, 2019

Residential Tenancy Branch