



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On November 5, 2019, the Landlord submitted an Application for Dispute Resolution requesting an order of possession for the rental unit based on the issuance of a One Month Notice to End Tenancy for Cause.

The matter was set for a conference call hearing. The Landlord's agent ("the Landlord") attended the conference call hearing; however, the Tenant did not.

The Landlord testified that the Tenant was served with the Notice of Dispute Resolution Proceeding using registered mail sent on November 13, 2019 to the Tenant's address. The Landlord provided a photograph of the envelope addressed to the Tenant and a copy of the registered mail receipt. The Landlord testified that the registered mail was returned to the Landlord as unclaimed.

Under the Act, a party cannot avoid service of documents. I find that in accordance with sections 89 and 90 of the Act, the Tenant is deemed to have been served with the Notice of Dispute Resolution Proceeding on November 18, 2019, which is the fifth day after it was mailed.

The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to an undisputed Notice?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on June 1, 2016, as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,800.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$900.00.

The Landlord testified that he served the Tenant with a One Month Notice to End Tenancy for Cause ("the One Month Notice") by posting the Notice to the Tenant's door on September 27, 2019. The Landlord provided a proof of service document that indicates the One Month Notice was served to the Tenant at

9:00 AM on September 27, 2019. The One Month Notice provides that the Tenant must move out of the rental unit by October 31, 2019.

The reasons selected by the Landlord within the One Month Notice are as follows:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*
Tenant has engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*

The One Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: "You may be EVICTED if you do not respond to this Notice." The Notice also informs the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the effective date set out on page one of the Notice.

The Landlord seeks an order of possession for the rental unit, based on an undisputed One Month Notice to End Tenancy for Cause dated September 26, 2019.

The Landlord testified that they have received rent payments for October and November on a use and occupancy only basis.

Analysis

Based on the evidence before me, the testimony of the Landlord and on a balance of probabilities, I find that the Tenant received a One Month Notice to End Tenancy for Cause dated September 26, 2019. I find that the Tenant received the One Month Notice on September 30, 2019, which is the third day after it was posted to the door.

I find that the Tenant did not apply to dispute the One Month Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Section 55 of the Act provides that a Landlord may request an order of possession of a rental unit when a notice to end tenancy is given by a Landlord and the Tenant has not disputed the Notice and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two (2) days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep \$100.00 from the security deposit of \$900.00 in full satisfaction of the filing fee.

Conclusion

The Tenant did not file to dispute the One Month Notice. The Tenant is presumed under the legislation to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two (2) days after service on the Tenant.

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: December 30, 2019

Residential Tenancy Branch