



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNSD, FF

Introduction

On January 24, 2020, the Landlord submitted an Application for Dispute Resolution requesting an order of possession for the rental unit; a monetary order for money owed or compensation for damage or loss; to keep all or part of the security deposit and pet damage deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord attended the conference call hearing; however, the Tenant did not. The line remained open while the phone system was monitored for fifteen minutes and the Tenant did not call into the hearing during this time.

The Landlord testified that he served the Tenant with the Notice of Dispute Resolution Proceeding document using registered mail sent to the Tenant's address on January 25, 2020. The Landlord provided a copy of the registered mail receipt as proof of service and testified that the Tenant picked up the registered mail.

I find that the Notice of Dispute Resolution Proceeding document was served to the Tenant in accordance with sections 89 and 90 of the Act. The Tenant is deemed to have received the Notice of Dispute Resolution Proceeding on January 30, 2020.

The Landlord was provided with an opportunity to ask questions about the hearing process. 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 for the rental unit?
- Is the Landlord entitled to money owed or compensation for damage or loss?

- Is the Landlord entitled to keep the security deposit and pet damage deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on September 17, 2019 as a one-year fixed term tenancy. Rent in the amount of \$1,400.00 is to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$700.00 and a pet damage deposit of \$700.00 to the Landlord.

The Landlord testified that he issued the Tenant a One Month Notice to End Tenancy for Cause ("the One Month Notice"). The Landlord testified that the Notice was posted to the Tenant's door on January 6, 2020.

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:

- *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so

The One Month Notice provides that the Tenant must move out of the rental unit by February 29, 2020.

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 testified that the Tenant is still living in the rental unit. The Landlord seeks an order of possession for the rental unit based on the undisputed One Month Notice.

Liquidated Damages

The Landlord testified that the tenancy agreement contains a liquidated damages clause that requires the Tenant to pay \$1,050.00 if the Tenant ends the tenancy prior to its termination date.

The Landlord is seeking a monetary order in the amount of \$1,102.50 for liquidated damages and GST. The Landlord provided a copy of the tenancy agreement and addendum containing the liquidated damages clause.

Security Deposit and Pet Damage Deposit

The Landlord is seeking to keep the \$700.00 security deposit and \$700.00 pet damage deposit towards his monetary claim.

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 January 6, 2020. I accept the Landlord's testimony that the Notice was posted to the Tenant's door on January 6, 2020.

The One Month Notice provided the Tenant with his rights of dispute. If the Tenant believed that the Landlord did not have sufficient proof to support the reasons for ending the tenancy, the Tenant was required to dispute the Notice within 10 Days. The Tenant's opportunity to dispute the Notice has expired.

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 February 29, 2020; 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 (2)(b) 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.

I find that the tenancy agreement contains a liquidated damages clause that entitles the Landlord to damages if the tenancy is ended early. I find that the fixed term tenancy is ongoing and the Tenant's failure to dispute the One Month Notice has resulted in the end of the tenancy. I find that the Landlord is entitled to liquidated damages of \$1,102.50.

I authorize the Landlord to keep the security deposit and pet damage deposit towards the award for liquidated damages.

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.

The Landlord has established a monetary award of \$1,202.50. I authorize the Landlord to keep \$1,202.50 from the security deposit and pet damage deposit.

Conclusion

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

The Tenant was served with the Notice of Dispute Resolution Proceeding and failed to attend the hearing.

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

I authorize the Landlord to keep \$1,202.50 from the security deposit and pet damage deposit for liquidated damages and the cost 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: March 30, 2020

Residential Tenancy Branch