



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated August 10, 2020 ("One Month Notice"), and to recover the \$100.00 cost of his Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on August 21, 2020. The Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and he confirmed them in the hearing. The Landlord also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, the Landlord advised me that he no longer needed an order of possession, as the Tenant moved out on September 24, 2020. However, the Landlord maintained his request for recovery of the \$100.00 Application filing fee.

Issue(s) to be Decided

Is the Landlord entitled to recovery of the \$100.00 Application filing fee from the Tenant?

Background and Evidence

The Landlord provided a copy of the tenancy agreement, and in the hearing he confirmed the following details of the tenancy. The fixed term tenancy began on May 15, 2019 and ran to April 30, 2020, and then operated on a month-to-month basis. The Tenant paid the Landlord a monthly rent of \$1,250.00, due on the first day of each month. The Tenant paid the Landlord a security deposit of \$625.00, and no pet damage deposit. The Landlord said that he still holds the Tenant's security deposit, pursuant to a monetary claim for which he applied against the Tenant in another future hearing.

The Landlord served the Tenant with a One Month Notice on August 17, 2020. It was signed and dated August 10, 2020, it had the rental unit address, and an effective vacancy date of September 30, 2020. The One Month Notice was served by posting it on the rental unit door on August 17, 2020, with the grounds for the eviction being that:

- The Tenant or a person permitted on the property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- The Tenant or a person permitted on the property by the 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;
 - jeopardized a lawful right or interest of another occupant or the landlord.

- The Tenant breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant did not apply to the RTB to dispute the One Month Notice. The Landlord said that the Tenant did not provide the Landlord with his forwarding address in writing or ask for the security deposit back.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on August 20, 2020, three days after it was posted to the door of the rental unit.

Section 47 (5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the One Month Notice, I find that he is conclusively presumed under section 47 (5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on September 24, 2020. As a result, I find that Landlord would be, therefore, entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. However, as the Tenant has already moved out, the Landlord advised that he has no need for an Order of Possession.

I also find that the Landlord is entitled to and I award the Landlord with recovery of the \$100.00 filing fee pursuant to section 72 of the Act, which he is authorized to retain from the Tenant's security deposit.

Conclusion

The Landlord is successful in his Application. He provided sufficient evidence to meet his burden of proof on a balance of probabilities. As the Tenant has moved out already, the Landlord advised that he does not need an Order of Possession. The Landlord is entitled to recovery of the \$100.00 Application filing fee for this proceeding, pursuant to

section 72 of the Act. The Landlord is authorized to retain \$100.00 of the Tenant's security deposit in full satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 02, 2020

Residential Tenancy Branch