



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Yellowhead Community Services
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR – MT, OPC, FFL

Introduction

This hearing was set to deal with cross applications at 11:00 a.m. on this date, via teleconference call. The tenant had applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; however, the tenant did not provide a copy of a 10 Day Notice. Rather, the tenant referred to receiving a One Month Notice to End Tenancy for Cause in the details of dispute. The landlord applied for an Order of Possession for cause and recovery of the filing fee.

Only the landlord was represented at the hearing. The tenant failed to appear despite leaving the teleconference call open until 11:30 a.m. I confirmed the Notice of Dispute Resolution Proceeding provided to the tenant has the same call in instructions and information as the Notice of Dispute Resolution Proceeding provided to the landlord under the landlord's Application for Dispute Resolution.

The landlord's agents stated they were not served with the tenant's Application for Dispute Resolution. Since the tenant failed to appear, I dismissed the tenant's application without leave to reapply; however, I did not proceed to determine whether the landlord was entitled to an order of Possession under the tenant's Application for Dispute Resolution as I was unsatisfied she served her Application for Dispute Resolution or other supporting documents upon the landlord.

I explored service of the landlord's Application for Dispute Resolution and evidence upon the tenant. The landlord's agents submitted that the landlord's Application for Dispute Resolution was sent to the tenant via registered mail on October 2, 2020 and three evidence packages were sent to the tenant via registered mail on October 9, 2020, October 14, 2020 and October 23, 2020. The landlord provided registered mail receipts as proof of service and confirmed the tenant was still occupying the rental unit until November 1, 2020. I was satisfied the tenant was duly served with the landlord's

Application for Dispute Resolution and evidence and I proceeded to hear the landlord's Application.

The landlord's agents confirmed that the tenant returned possession of the rental unit to the landlord on November 1, 2020 and an Order of Possession is no longer required. Accordingly, I do not provide one to the landlord with this decision.

The landlord's agents stated they seek recovery of the filing fee paid for their Application for Dispute Resolution and I proceeded to hear that request.

The landlord's agents stated they also seek to recover the cost to re-key the property and recover other damages; however, the landlord's agents acknowledged they did not serve the tenant with an Amendment to an Application for Dispute Resolution or otherwise serve the tenant with notification that such matters would be the subject of today's hearing. As such, I did not permit the landlord's Application for Dispute Resolution to be amended. The landlord remains at liberty to pursue a monetary claim against the tenant by filing another Application for Dispute Resolution.

Issue(s) to be Decided

Award of the filing fee to the landlord.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy started on October 1, 2019 for a fixed term set to expire on January 1, 2020 and then continue on a month to month basis. The landlord collected a security deposit of \$367.50 and the tenant was required to pay rent of \$735.00 on the first day of every month.

On August 27, 2020 the landlord's agent posted a One Month Notice to End Tenancy for Cause ("1 Month Notice") on the door of the rental unit. The 1 Month Notice was provided as evidence. I noted that the 1 Month Notice was in the approved form and is duly signed and completed. The stated effective date of the 1 Month Notice is September 30, 2020.

The landlord's agents submitted that the tenant did not vacate the rental unit by the stated effective date of September 30, 2020 and had not served the landlord with her Application for Dispute Resolution so the landlord filed this Application for Dispute Resolution to seek an Order of Possession.

The landlord's agents indicated the landlord would be satisfied to recover the filing fee by way of a deduction from the tenant's security deposit.

Analysis

Under section 72 of the Act, I have the discretion to order one party to pay the other party for the filing fee. The landlord paid a filing fee of \$100.00 and the landlord seeks recovery of this amount from the tenant. The landlord had made this request on its Application for Dispute Resolution which was served upon the tenant. Below, I provide my findings and reasons in response to this request.

Where a tenant receives a Notice to End Tenancy from their landlord the tenant is required to either file an Application for Dispute Resolution to dispute the Notice, which also requires the tenant to serve the Application for Dispute Resolution upon the landlord, or the tenant is required to vacate the rental unit by the effective date of the Notice.

In this case, the tenant filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, although it appears the tenant was intending to dispute a 1 Month Notice based on the details of cause; however, the tenant did not serve her Application for Dispute Resolution upon the landlord. Nor, did the tenant vacate the rental unit by September 30, 2020.

In the above circumstances, I find the landlord's decision to file its own Application for Dispute Resolution on September 30, 2020 to seek an Order of Possession based on a 1 Month Notice dated August 27, 2020 to be reasonable and I award the landlord recovery of the \$100.00 fee it paid for its Application for Dispute Resolution.

As requested, I authorize the landlord to deduct \$100.00 from the tenant's security deposit in satisfaction of the above award. The landlord is now considered to be holding a security deposit in the net amount of \$267.50.

Conclusion

The tenant's Application for Dispute Resolution was dismissed without leave.

The landlord no longer requires an Order of Possession as the tenant returned possession of the rental unit to the landlord on November 1, 2020 and I do not provide one to the landlord with this decision.

The landlord is authorized to deduct \$100.00 from the tenant's security deposit to recover the filing fee from the tenant and the landlord is now considered to be holding a security deposit in the net amount of \$267.50.

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: November 10, 2020

Residential Tenancy Branch