



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 19, 2020, wherein the Landlord sought an Order of Possession based on an undisputed 1 Month Notice to End Tenancy for Cause issued on September 23, 2020 (the "Notice") as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on January 12, 2021. Only the Landlord's representatives, M.M. the Regional Manager, and R.M., the Resident Manager, called into the hearing. R.M. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 9:48 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's representatives and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. R.M. testified that they served the Tenants with the Notice of Hearing and the Application on October 19, 2020 by registered mail. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of October 24, 2020 and I proceeded with the hearing in their absence.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

This tenancy began May 1, 2015. The Tenants paid a security deposit of \$450.00 and at the time of the hearing monthly rent was \$948.12.

The Landlord alleged the Tenants have an unreasonable number of occupants living in the rental unit and may have sublet or assigned their tenancy without the Landlord's consent. Documentary evidence submitted by the Landlord confirms the resident manager has attempted to discuss these issues with the Tenants and they refuse to talk to him.

On September 23, 2020 the Landlord served the Notice by posting to the rental unit door. The Tenants failed to apply to dispute the Notice within 10 days of service of the Notice.

R.M. confirmed the Landlord has continued to accept rent from the Tenants but has issued receipts for use and occupancy only. R.M. further confirmed that rent has been paid for the month of January 2021.

Analysis

The Landlord seeks to end this tenancy pursuant to section 47 of the *Residential Tenancy Act* (the "Act"); the relevant portions of which read as follows:

Landlord's notice: cause

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(c)there are an unreasonable number of occupants in a rental unit;

...

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

...

(2)A notice under this section must end the tenancy effective on a date that is

(a)not earlier than one month after the date the notice is received, and

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

I find the Tenants were served the Notice by posting to the rental unit door on September 23, 2020. Pursuant to section 90 of the *Act*, documents served in this manner are deemed served three days later; namely: September 26, 2020.

I accept R.M.'s testimony that the Tenants failed to dispute the Notice within 10 days as required by section 47(4). As such, and pursuant to section 47(5) the Tenants are conclusively presumed to accept the end of the tenancy and must vacate the rental unit.

I accept R.M.'s testimony that rent has been paid until January 31, 2021 and that the Landlords have issued receipts for use and occupancy only. Pursuant to section 55 of the *Act*, I therefore grant the Landlord an Order of Possession effective 1:00 p.m. on January 31, 2021.

As the Landlord has been successful in this Application, I award them recover of the \$100.00 filing fee. Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to withhold \$100.00 from the Tenants' \$450.00 security deposit as recover of this fee.

Conclusion

The Landlord's request for an Order of Possession and recovery of the filing fee is granted.

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: January 12, 2021

Residential Tenancy Branch