



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT (tenant); OPC, FFL (landlord)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlords ("the landlord") attended and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and the landlord was given an opportunity to ask questions about the process. The landlord was informed that no recording of the hearing was permitted.

The tenants ("the tenant") did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 16 minutes to allow the tenant

the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

Application by Tenant and Service by Tenant upon Landlord

The landlord testified that they did not know the tenant had brought an application which was scheduled for hearing today. They testified they were not served with any documents and did not receive notice of the hearing.

The tenant did not attend, and no evidence was submitted by the tenant with respect to the tenant's application.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the tenant did not attend the hearing and in the absence of any evidence or submissions for the tenant, I order the tenant's application dismissed without leave to reapply.

Service by Landlord upon Tenant

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Hearing and Application for Dispute Resolution for this hearing.

The landlord testified they sent the documents by individual registered mail to each tenant on August 14, 2020 mailed to the tenant's residence, thereby effecting service under section 90 on March 12, 2021. The landlord provided the tracking numbers for the mailing and submitted copies of the receipts.

Section 15 of *Residential Tenancy Policy Guideline #12. Service Provisions* explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

As the landlord testified to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord has proven service of the Notice of Hearing and Application for Dispute Resolution on the tenant.

As such, I find that each tenant was served with the Notice of Hearing and Application for Dispute Resolution in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Withdrawal of Filing Fee

The landlord withdrew the application for reimbursement of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing. The 1-year fixed term tenancy began on January 1, 2021. Rent in the amount of \$1,250.00 is payable on the first day of each month. The tenant remitted a security deposit in the amount of \$575.00 and a pet deposit in the same amount for a total of \$1,150.00 at the start of the tenancy, which the landlord holds. The landlord submitted a copy of the tenancy agreement.

The landlord testified that the tenant was served with the landlord's One Month Notice ("**Notice**") by posting to the tenant's door February 17, 2021 thereby effecting service under section 90 on February 20, 2021.

The Notice is in the standard RTB form and lists multiple grounds for ending the tenancy. The Notice states an effective move-out date of March 31, 2021. The landlord submitted a copy of the Notice.

The Notice provided that the tenant may dispute the Notice within ten days of service. The tenant filed a dispute on March 1, 2021. I have dismissed the tenant's application to dispute the Notice.

The landlord testified the tenant caused multiple disturbances including domestic violence involving the police. The landlord submitted supporting documentary evidence and affirmed testimony.

The landlord testified that the tenant may have permanently vacated the unit on June 7, 2021.

The landlord requested an Order of Possession.

Analysis

I find the tenant is deemed served with the Notice on February 20, 2021.

Sections 47(4) and (5) of the Act state:

(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.

Based on the landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice and the tenant application to dispute the Notice filed within 10 days has been dismissed.

I find the Notice complied with section 52 in terms of form and content.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two-day Order of Possession, pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective two days after service on the tenant.

The tenant's application is dismissed without leave to reapply.

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: June 08, 2021

Residential Tenancy Branch