



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), for an order of possession based on an undisputed One Month Notice for Cause, (the “Notice”), issued on May 21, 2021, and an order to recover the cost of filing the application from the tenant.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Preliminary and Procedural Issues

The tenant stated that they did dispute the Notice, and a hearing was held on September 24, 2021. The tenant stated they did not attend the hearing and they did not serve the landlord with their application.

The landlord confirmed they were not served with the tenant’s application and this is the first they have heard that there was a previous hearing.

I have reviewed the previous Decision, made on September 27, 2021, the Arbitrator dismissed the tenant’s application with leave to reapply; however, the Arbitrator did not extend any time limitation that may apply under the Act. I have noted the file number on the covering page of this Decision.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties agreed that the tenant was served with the Notice, by posting to the door of the rental unit which was witnessed by a third party and acknowledged received by the tenant. Filed in evidence is a copy of the Notice, and proof of service.

The Notice explains the tenant had ten 10 days to dispute the Notice. The Notice further explains if the Notice is not disputed within the ten days that the tenant is presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice.

The landlord stated they were not served with the tenant's application, which was dismissed. The landlord seeks an order of possession as they do not want the tenancy to continue.

The landlord stated they have accepted occupancy rent for December 2021.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although, I accept the tenant disputed the Notice, their application was dismissed on September 27, 2021. The tenant did not appear at the hearing and they failed to serve the landlord in accordance with section 89 of the Act.

When a party makes an application for dispute resolution and does not attend the hearing and does not serve the other party with their application, I find it has the same effect, as if, that application was never made. Therefore, I only need to consider if the landlord has met their statutory requirement under the Act to end the tenancy as the merits of Notice do not need to be considered as the tenant's application to cancel the Notice was dismissed.

I accept the evidence of the landlord that the Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 47 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

Further, I accept the evidence of the parties that the tenant was served with the Notice in compliance with the service provisions under section 88 of the Act.,

I am satisfied based on the landlord's evidence that the landlord has met the statutory requirements under the Act to end a tenancy.

Although the tenant did apply to dispute the Notice, their application was dismissed. I find the tenancy legally ended on June 30, 2021 and the tenant is overholding the premises on an occupancy basis.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

The landlord has agreed that if the tenant pays rent for January 2022, on or before January 1, 2022, they are agreeable to extend the effective day to end the tenancy to January 31, 2022.

The landlord stated if rent is not paid by January 1, 2022, they seek an order of possession that is effective **two days** after service on the tenant.

Based on the above, I find it appropriate to grant the landlord two separate orders of possession. The two-day order of possession will only be enforceable if the tenant fails to pay rent on or before January 1, 2022..

Should the tenant pay occupancy rent for January 2022, the landlord is entitled to an order of possession effective January 31, 2022.

These orders 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 landlord has established a total monetary claim of \$100.00 to recover the filing fee from the tenant for this application. I order that the landlord retain the amount of \$100.00 from the tenant's security deposit in full satisfaction of the claim.

Conclusion

The landlord is granted two separate orders of possession and may keep a portion of the security deposit in full satisfaction of the claim.

Dated: December 20, 2021

Residential Tenancy Branch