



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”), on September 11, 2021 for an order of possession based on a undisputed One Month Notice to End Tenancy for Cause (the “Notice”) issued on July 2, 2021, with an effective date of August 31, 2021, and to recover the cost of filing the application from the tenant.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 23, 2021, a Canada post tracking number was provided as evidence of service. The Canada Post tracking shows the package was unclaimed by the tenant.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pickup the package does not override the deemed served provisions of the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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 landlord testified that the tenant was served with the Notice, by registered mail sent on July 15, 2021. A Canada Post tracking number was submitted in evidence. The Canada Post history shows it was successfully delivered to the tenant on July 29, 2021. I find the tenant was served with the Notice.

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. Filed in evidence is a copy of the Notice.

The landlord testified that the tenant has not vacated the rental unit, and rent was received for use and occupancy only. The landlord stated that the tenant has now failed to pay occupancy rent for January 2022.

Analysis

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

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 landlord that the tenant was served with the Notice in compliance with the service provisions under section 88 of the Act, which the tenant acknowledged service of the Notice as they accepted the Canada Post package on July 29, 2021.

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

The tenant did not apply to dispute the Notice and therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order 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 tenant failed to dispute the Notice. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep a portion of the security deposit in full satisfaction of the claim.

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 25, 2022

Residential Tenancy Branch