



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlord applied for:

- and order of possession, having issued a One Month Notice to End Tenancy for Cause, dated September 21, 2021 (the One Month Notice); and
- the filing fee.

The hearing teleconference commenced promptly at 9:30 a.m., and only the Landlord was present. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified he served the Notice of Dispute Resolution Proceeding and evidence on the Tenant on November 18, 2021 by registered mail, and provided a tracking number (noted on the cover page of this decision). The Landlord testified he served a second evidence package on the Tenant on February 8, 2022 by registered mail, and provided a tracking number (noted on the cover page of this decision). Based on the Landlord's evidence and affirmed testimony, and having checked the two tracking numbers, I find the Landlord served the Tenant in accordance with section 89 of the Act.

In accordance with section 90 of the Act, I find the Landlord's first document package deemed received by the Tenant on November 23, 2021, and his second document package deemed received by the Tenant on February 13, 2022.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to the filing fee?

Background and Evidence

The Landlord provided the following particulars on the tenancy. It began on October 14, 2020; rent is \$461.00, due on the first of the month; and the Tenant paid a security deposit of \$187.50, which the Landlord still holds.

The Landlord submitted a copy of the One Month Notice as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states an effective date of the notice, states the reason for ending the tenancy, and is in the approved form. The Notice states the tenancy is ending because:

- the Tenant or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
 - put the Landlord's property at significant risk.

The Details of the Event(s) section refers to several police files, including one from September 13, 2021, in which the Tenant assaulted another person on the property.

The Landlord testified he served the One Month Notice on the Tenant on September 21, 2021 by registered mail, and provided a tracking number (noted on the cover page of this decision).

The Landlord testified that on August 12, 2021, police were summoned when one of the Tenant's visitors threatened a staff member in the elevator with a knife.

The Landlord submitted as evidence a signed incident report dated August 16, 2021, in which another tenant stated that on that day, at around 3:00 p.m., he saw the Tenant banging a lamp on the floor in the hallway of the property, then aim a butane torch at the baseboards and direct the fire at the floor.

The Landlord testified that on September 12, 2021 at approximately 3:30 a.m., the Tenant was involved in a fight in the property, which police attended.

The Landlord testified that as by February 5, 2022 the Tenant had become so violent, the Landlord had instructed staff not to approach the Tenant.

The Landlord testified that on February 5, 2022 at approximately 2:45 p.m., the Tenant grabbed the mop bucket the Landlord was using, pointed his finger in the Landlord's face, yelled and swore at the Landlord, and threw a punch which came within inches of the Landlord's face. Police were summoned to the property.

The Landlord submitted as evidence police file numbers, and testified that these events are "just a snapshot" of the Tenant's problematic behaviours.

The Landlord testified that the Tenant has many belongings in the hallway of the property, such that the fire department has indicated it is a hazard, and another tenant is not able to open their door. The Landlord submitted photos as evidence.

The Landlord testified that the Tenant allows his dog to defecate in the hallway of the property, and the Tenant does not clean up after his dog. The Landlord submitted photos as evidence.

Analysis

The Landlord has provided both affirmed testimony and documentary evidence to support his claim that he served the One Month Notice on the Tenant by registered mail on September 21, 2021. Having checked the tracking number, I find the Landlord served the Tenant in accordance with section 88 of the Act.

The One Month Notice is deemed received by the Tenant on September 26, 2021, per section 90 of the Act.

As it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form, I find the One Month Notice meets the form and content requirements of section 52 of the Act.

Section 47(4) of the Act provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that the Tenant did not file an application for dispute resolution within 10 days of September 26, 2021, the timeline granted under section 47(4) of the Act. Accordingly, I find that the Tenant is conclusively presumed under section 47(5) to have accepted that the tenancy ends on the corrected effective date of the One Month Notice, October 31, 2021, and must vacate the rental unit. In accordance with section 55(2)(b) of the Act, I find that the Landlord is entitled to an Order of Possession.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in his application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlord to retain \$100.00 of the Tenant's security deposit in satisfaction.

Conclusion

The Landlord's application is granted.

Pursuant to section 55(2)(b) of the Act, I grant the Landlord an order of possession which will be effective two days after it is served on the Tenant.

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: February 25, 2022

Residential Tenancy Branch