



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

While the landlord's agent, MM ("landlord"), attended the hearing by way of conference call, the tenants did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only one who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

The landlord gave sworn testimony that on January 14, 2022, the landlord's Application for Dispute Resolution hearing package and evidence were sent to the tenant by way of registered mail. The landlord provided a tracking number during the hearing. In accordance with sections 88, 89, and 90 of the Act, I find the tenant deemed served with the landlord's application and evidence on January 19, 2022, five days after mailing. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

The landlord provided the following submissions. The landlord testified that both parties entered into a fixed-term tenancy that began on June 15, 2021, and was to end on December 31, 2021. Monthly rent is set at \$7,500.00, payable on the first of the month. The landlord had collected, and still holds a security deposit in the amount of \$3,750.00.

The landlord submits that both parties initialed the portion of the tenancy agreement that stipulated that the tenant must move out on December 31, 2021, at the end of the fixed term. The landlord testified that the tenant was aware when entering into the tenancy agreement that the tenant must vacate the rental unit, and both parties had initialed the tenancy agreement to indicate that was understood. The landlord testified that the landlord had occupied the rental unit prior to this tenancy, and had to temporarily vacate for six months as they had to leave the country. The intention of the landlord to return and move back into the furnished rental unit.

The landlord testified that the tenant has not moved out, and is requesting an Order of Possession.

Analysis

Section 13.1 of the Residential Tenancy Regulation allows the landlord to include a vacate clause if the landlord, or a close family member of the landlord, intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

Residential Tenancy Policy Guideline #30 further clarifies the requirements for the vacate clause:

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay compensation as required when ending a tenancy under section 49.

I have reviewed the written tenancy agreement that was submitted in evidence for this hearing. I note that although both parties did initial the tenancy agreement, the reason

for including the vacate clause was not provided on the tenancy agreement. In accordance with Residential Tenancy Policy Guideline #30, the vacate clause is therefore not enforceable. The landlord's application for an Order of Possession is dismissed without leave to reapply

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was unsuccessful with their application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

Conclusion

The landlord's entire 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: March 02, 2022

Residential Tenancy Branch