



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, CNC-MT, AS, OLC, LRE

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application filed on December 17, 2021, is seeking orders as follows:

1. For an order of possession
2. To recover the cost of filing the application.

The tenant's application filed on November 25, 2021, is seeking orders as follows:

1. To be allowed more time to dispute a One Month Notice for Cause (the "Notice"), issued on October 21, 2021;
2. I want to suspend or set conditions on the landlord's right to enter the rental unit;
3. I want to be allowed to assign or sublet and the landlord's permission has been unreasonably withheld; and
4. I want the landlord to comply with the Act.

Only the landlord appeared. The tenant did not appear although the tenant was sent on March 14, 2022, a reminder notification of today's hearing to the email address they provided to the Residential Tenancy Branch for service of documents.

Preliminary and Procedural issues

Tenant's application

At the outset of the hearing the landlord stated they were not served with the tenant's application for dispute resolution. The tenant did not appear at the hearing although we

waited, and the telephone system was monitored for 15 minutes. As the tenant has failed to prove service on the landlord or any evidence that they had an exceptional circumstance for filing their application late, I find I must dismiss the tenant's application without leave to reapply.

Landlord's application

The landlord's agent testified that they served the tenant with their Application for Dispute Resolution and Notice of Hearing, sent by registered mail on December 23, 2021. The agent stated that the tenant refused to pickup the package and it was returned unclaimed. Filed in evidence is a copy of the Canada Post tracking number. I find the tenant was deemed served 5 days after it was mailed, December 28, 2021.

Further, this hearing date was schedule based on the tenant's original request for a hearing. The tenant has received multiple notifications and reminders from the Residential Tenancy Branch on both files. I am satisfied that tenant was fully aware of their requirement to present at todays hearing and has chosen not to.

The landlord's agent stated that the tenant goes by two different names, the name they used in the Application and the named they signed on the tenancy agreement. In this case, I find it appropriate to amend the style of cause to included both names used by the tenant.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord's agent testified that the tenant was served with the Notice on October 21, 2021, in person, which was witnessed by the local police detachment.

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.

I note in the tenant's application indicated it was received on November 1, 2021, and the tenant filed their application on November 25, 2021, which was not within ten days as required by the Act.

The landlord's agent stated that the tenant has also now stopped paying rent, as they have not paid any rent for December 2021, January, February, and March 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 of 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 in their application.

While I accept the tenant filed an Application for Dispute Resolution on November 25, 2021, which was late, and the tenant was requesting more time to be allowed to dispute the Notice. However, the tenant did not serve the landlord with that application or attend the hearing to prove they had an exceptional circumstance as a result the tenant's application was dismissed without leave to reapply.

As the tenant was not granted more time to dispute the Notice, and I am satisfied based on the landlord's evidence that the landlord has met the statutory requirements under the Act to end a tenancy. I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on November 30, 2021, and the tenant is overholding the premises.

The tenant has now failed to pay rent for four (4) months. 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's application is dismissed without leave to reapply.

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: March 17, 2022

Residential Tenancy Branch