



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:17 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlord attended the hearing and 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 Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord and I were the only ones who had called into the hearing.

The landlord testified that he served the tenant with the notice of dispute resolution hearing package and supporting documentary evidence via email on March 17, 2022. He testified that the tenant and he had agreed that each may serve the other via email. However, he did not provide any corroboration of this agreement (such as an email or text message stating as such). Under ordinary circumstances, service by email is not permitted unless it is explicitly agreed to. However, the Residential Tenancy Branch records (the "**RTB**") show that the tenant called the RTB on March 18, 2022 and was informed of the hearing procedure. As such, I am satisfied about the tenant received the required documents from the landlord via email. I therefore deemed that the tenant has been sufficiently served with these documents pursuant to section 71 of the Act.

The landlord advised me that the tenant vacated the rental unit on May 1, 2022, without notice to him. He stated that despite this, he still wanted the hearing to proceed, as he wanted to recover the filing fee even though he no longer required an order of possession.

Issues to be Decided

Is the landlord entitled to recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2021. The rental unit is Located on the lower level of a single detached house. The landlord lives on the upper level. Monthly rent is \$1,400 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$700, which the landlord continues to hold in trust for the tenant. As stated above, the tenant vacated the rental unit on May 1, 2022. She did not provide the landlord with a forwarding address.

On December 27, 2022 the landlord served the tenant with the Notice via email. It listed an effective date of February 1, 2022.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk;

On December 28, 2022, the tenant texted the landlord acknowledging receipt of the Notice and asking for more time before she had to move out.

The tenant did not dispute the Notice.

Analysis

Sections 47(4) and (5) of the Act state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Based on the December 28, 2022 text message, I find that the tenant received the Notice as claimed by landlord. Pursuant to section 71 of the Act I deem that the Notice has been sufficiently served.

Based on the landlord's testimony and the Notice, I find that the tenant was served with an effective notice. The tenant did not participate in the hearing or file an application to dispute the Notice within 10 days (or at all). Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (February 1, 2022). As she vacated the rental unit May 1, 2022, there is no need for me to issue an order of possession pursuant to section 55.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover the filing fee from the tenant. Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this amount.

Conclusion

The landlord has been successful in this application. Accordingly, he may withhold \$100 of the security deposit in satisfaction of the filing fee he paid to make this application.

As the tenant has already vacated the rental unit, I decline to issue an order of possession.

I order the landlord to serve a copy of this decision on the tenant within three days of receiving it from the RTB. He may do so via email.

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: May 10, 2022

Residential Tenancy Branch