



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. The landlord applied on March 4, 2022 for:

- an order of possession, having served a One Month Notice to End Tenancy for Cause, dated October 29, 2021 (the One Month Notice); and
- the filing fee.

The hearing was attended by the landlord but not the tenant. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified they served the Notice of Dispute Resolution Proceeding and some of their evidence on the tenant by hand on March 11, 2022, and provided additional evidence, including videos on a USB drive, by slipping it under the door on June 2, 2022. The landlord testified they were able to confirm via video that the tenant opened the door and picked up the evidence the same day.

Based on the landlord’s undisputed testimony, I find the NDRP and evidence served on the tenant on March 11, 2022 in accordance with the Act; and I find the landlord’s additional evidence sufficiently served on the tenant on March 11, 2022 in accordance with section 71 of the Act.

Rule 3.10.5 states that “before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.”

As the landlord testified they did not confirm the tenant was able to view the videos on the USB, I advised the landlord I would not be considering the videos in my decision. I advised the landlord they were at liberty to provide affirmed testimony on the content of the videos, and any other matter related to the dispute.

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 undisputed testimony regarding the following facts. This tenancy began March 17, 2017. Rent is now \$375.00 a month, due on the last day of the month for the following month. The landlord currently holds a security deposit of \$187.50.

A copy of the tenancy agreement is submitted as evidence.

One of the reasons indicated on page 2 of the One Month Notice is that the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property. The Details of Events section states that the tenant "has been observed on CCTV breaking into multiple rooms."

The landlord testified they served the One Month Notice on the tenant in person on October 29, 2021, and submitted a witnessed proof of service form as evidence. The landlord was not aware of the tenants filing an application to dispute the Notice.

The landlord testified that tenants reported their units having been broken into on December 5, 2019; January 5, 2020; and August 8, 2021. The landlord testified the residence had extensive video surveillance and that the landlord was able to review video footage of the tenant breaking into the three units using a screwdriver or other tool to overcome the locks.

Analysis

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 One Month Notice was served on the tenant in person on October 29, 2021, in accordance with sections 88 of the Act.

I find that the tenant has failed to file an application for dispute resolution within 10 days of October 29, 2021, the timeline granted under section 47(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ends on the effective date of the One Month Notice, November 30, 2021.

I find that the landlord's One Month Notice meets the form and content requirements of section 52 of the Act as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form.

I accept the landlord's affirmed undisputed testimony that, on three occasions, other tenants have reported their units being broken into, and that the subject tenant was observed on video surveillance footage using a screwdriver or other tool to overcome the locks and break into the rental units. I accept that this is illegal activity that has, or is likely to damage the landlord's property.

Therefore, in accordance with section 55 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 their 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, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction.

The security deposit for this tenancy is reduced by \$100.00 to \$87.50.

Conclusion

The landlord's application is granted.

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: June 20, 2022

Residential Tenancy Branch