



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, FFL, CNR**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the “Act”) for Orders as follows

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The tenant applied as follows:

- For cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) pursuant to section 46 of the Act

The landlord applied as follows:

- For an Order of Possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlords being represented by landlord JS, agent CY, and two witnesses CB and CT. The tenants JV and DY appeared along with witnesses JY and KM. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issue

The landlord mistakenly attributed the wrong last name to tenant DY in their application for dispute resolution and pursuant to section 64(3)(c) of the Act I have amended the application accordingly to reflect the correct last name.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an Order of Possession?
2. Is the One Month Notice to End Tenancy for Cause ("One Month Notice") valid and enforceable against the tenant? If so, is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to reimbursement for the filing fee?

Background and Evidence

The tenancy commenced on June 1, 2020, on a month-to-month basis. Rent is \$1,100.00 per month payable on the first of each month. The landlord holds a security deposit of \$550.00 in trust for the tenants. The tenants still occupy the residence.

The tenants confirmed receipt of the 10 Day Notice dated October 3, 2022. Pursuant to section 89 of the Act the tenants are found to have been properly served. The tenants stated they did not receive the One Month Notice dated August 7, 2022 with an effective date of September 7, 2022. The landlord testified that the agent CY placed the One Month Notice on the tenants' door on August 7, 2022. The landlord provided a proof of service form in evidence, with a portion filled out stating that an individual witnessed the One Month Notice placed on the door, as well as a picture of an envelope taped to the door of the rental unit. The picture was signed by the same individual who witnessed the One Month Notice taped to the door.

The landlord applied for an Order of Possession based on the One Month Notice

Analysis

Based on the proof of service form and accompanying photograph, and pursuant to section 90 of the Act, I find that the tenants are deemed to have received the One Month Notice on August 10, 2022. Section 47 of the Act states in part:

(3)A notice under this section must comply with [section 52](#) *[form and content of notice to end tenancy]*.

(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.

I find that the One Month Notice complies with the form and content requirements of section 52 of the Act and is therefore valid.

The tenants did not dispute the One Month Notice. Therefore, pursuant to section 47(5) of the Act the tenants are conclusively presumed to have accepted that the tenancy has ended. The landlord's application for an Order of Possession is granted.

As the landlord has been granted an Order of Possession based on the One Month Notice, the tenant's application to dispute the 10 Day Notice is no longer applicable and the application is therefore dismissed.

As the landlord was successful in their application, they are also entitled to return of the \$100.00 filing fee in this matter.

Conclusion

The landlord's application for an Order of Possession is granted. As the landlord was successful in his application, he is also entitled to recover the filing fee for his application. Using the offsetting provisions contained in section 72 of the Act, I allow the landlord to retain \$100.00 from the tenant's security deposit in full satisfaction for a return of the filing fee.

The tenants' application is dismissed.

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: November 16, 2022

Residential Tenancy Branch