



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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:46 am in order to enable them to call into the hearing scheduled to start at 9:30 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. One witness of the landlord attended ("**SE**"). 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, SE, and I were the only ones who had called into the hearing.

The landlord testified he served that the tenants with the notice of dispute resolution package and supporting documentary evidence by posting them on the door of the rental unit on October 2, 2021. He testified that after he posted them, he received a text message from one of the tenants acknowledging service and asking questions about the documents. I find that the tenants are deemed served with these documents on October 5, 2022, three days after the landlord posted them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

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

The parties entered into a written tenancy agreement starting November 1, 2021. Prior to this tenancy, tenant AP and the landlord had a tenancy agreement for the rental of the same rental unit. They and tenant IP entered into a new agreement after IP moved into the rental unit. Monthly rent is \$1,500 and is payable on the first of each month. AP apaid the landlord a security deposit of \$750 when he first moved into the rental unit. This security deposit was carried over to the new tenancy. In addition, the tenants paid the landlord a pet damage deposit of \$750 at the start of the tenancy. The landlord holds both these deposits in trust for the tenants.

The landlord testified that he served the tenant with a one month notice to end tenancy for cause (the “**Notice**”) on August 17, 2022 by posting it on the door of the rental unit. person. The landlord submitted a proof of service form (#RTB -34) which was signed by him and a witness. The Notice specified an effective date of September 30, 2022.

The tenant did not dispute the Notice at the Residential Tenancy Branch (the “**RTB**”) or move out on the effective date listed.

Analysis

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

Landlord's notice: cause

(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 landlord’s testimony and the Notice, I find that the tenants were served with the Notice on August 17, 2022. The tenants did not file an application to dispute the notice within 10 days (or at all). The Notice meets the form and content requirements of section 52 of the Act.

Therefore, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (September 30, 2022), and were required to vacate the rental unit. As this has not occurred, I find that the landlord is entitled to an order of possession.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover the filing fee (\$100) from the tenants.

Pursuant to section 72(2) of the Act, the landlord may deduct \$100 from the security deposit in satisfaction of the monetary order made above. He must handle the balance of the security and pet damage deposits in accordance with the Act.

Conclusion

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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 28, 2022

Residential Tenancy Branch