



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “Act”) to enforce a One-Month Notice to End Tenancy for Cause (the “Notice”) issued on August 2, 2022, for a monetary order for unpaid rent and recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Application for Dispute Resolution to the Tenant by personal service on September 21, 2022, a proof of service form was provided as proof of service, signed by a witness to this service. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters - Related Issues

I have reviewed the Landlord’s application, and I note that they have applied to enforce a Notice to end tenancy as well as another issue. I find that this other issue is not related to the Landlord’s request to enforce the Notice. As this other matter does not

relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Landlord's claim for a monetary order for unpaid rent. I will proceed with this hearing on the Landlord's claim to enforce a One-Month Notice and recover their filing fee for this application.

Issues to be Decided

- Is the Landlord entitled to an order of possession, pursuant to sections 47 and 55 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that the tenancy began on January 31, 2022, that rent in the amount of \$1,100.00 is to be paid by the first day of each month and that they had not collected a security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on August 2, 2022, by posting it to the front door of the rental unit. The reasons for the Notice were checked off as follows:

- *Tenant has allowed an unreasonable number of occupants in the unit/suite/property/park.*
- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.*

- *Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, or physical well-being of another occupant or the landlord.*
- *Tenant has assigned or sublet the rental unit/site/property/part without the landlord's written consent.*

The Notice states the Tenant must move out of the rental unit by September 2, 2022. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has been late in paying their rent nine times in the last year, in Feb, March, April, May, August, October, November and December 2022, as well as January 2023.

The Landlord testified that due to the number of times that the Tenant has been late paying the rent they are seeking to enforce their Notice to end the tenancy and are requesting an order of possession.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

Landlord's notice: cause

47 (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 Tenant was deemed to have received the Notice to end the tenancy on September 5, 2022, three days after the Notice had been posted to the front door of the rental unit. Pursuant to section 47(8) of the *Act*, the Tenant had 10 days to dispute the Notice. Consequently, the Tenant had until September 15, 2022, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In this case, I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired. Therefore, pursuant to section 47(5a) I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

Additionally, I accept the undisputed testimony of the Landlord regarding the late payment of rent for this tenancy, that the Tenant has paid the rent late nine times in the last twelve months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord.

Section 55(2b) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 2 days after service of this Order upon 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.

Additionally, 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 has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. I grant the Landlord a monetary order in the amount of \$100.00, in the recovery of the filing fee paid for these proceedings.

Conclusion

I find that the Tenant did not dispute the Notice and is therefore presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service of this Order upon the Tenant. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I find for the Landlord under sections 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$100.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 24, 2023

Residential Tenancy Branch