



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, OLC, FFT (Tenant)
 OPC, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed their application September 04, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause
- To dispute a rent increase that is above the amount allowed by law
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Landlord filed their application September 28, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 12, 2022 (the “Notice”)
- To recover the filing fee

The Agent appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agent. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

Service

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package was sent to the Tenant at the rental unit October 12, 2022, by registered mail and Tracking Number 913 relates to this. The Landlord submitted the tracking information for Tracking Number 913 which shows the package was unclaimed after two notice cards were left.

The Agent testified that the Landlord's evidence was sent to the Tenant at the rental unit December 28, 2022, by registered mail and the Tracking Number noted in the Case Overview relates to this. However, the Case Overview only provides Tracking Number 913, above, and Tracking Number 575 in relation to serving the Notice.

Based on the undisputed testimony of the Agent and documentary evidence submitted, I am satisfied the Tenant was served with the hearing package in accordance with section 89(2)(b) of the *Residential Tenancy Act* (the "*Act*"). The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the hearing package October 17, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant was served with the Landlord's evidence in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the evidence January 02, 2023. I find the Landlord complied with rule 3.14 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Tenant's Application

In relation to the Tenant's Application, rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Tenant did not appear at the hearing, the Tenant's Application is dismissed without leave to re-apply.

I note that the Tenant's dispute of a One Month Notice to End Tenancy for Cause relates to a notice delivered in person August 23, 2022. As stated, the Tenant filed their application September 04, 2022. I find the Tenant's dispute of a One Month Notice to End Tenancy for Cause cannot relate to the Notice because the Notice was not issued until September 12, 2022, after the Tenant filed their application. The Tenant did not submit any evidence and did not submit a One Month Notice to End Tenancy for Cause that their application relates to.

I decline to consider whether the Landlord is entitled to an Order of Possession based on the Tenant's Application being dismissed without leave to re-apply (section 55(1) of the Act) because the Tenant's Application relates to a One Month Notice to End Tenancy for Cause that is not before me.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted a written tenancy agreement. The tenancy started April 01, 2022. Rent is due on or before the first day of each month.

The Notice was submitted. The Notice has an effective date of October 31, 2022. The grounds for the Notice are that the Tenant is repeatedly late paying rent. The Notice states that the Tenant has paid rent late at least five times including in May, June, July, August and September of 2022.

The Agent confirmed that the Tenant has paid rent late at least five times during the tenancy including in May, June, July, August and September of 2022.

The Agent testified that the Notice was sent to the Tenant September 12, 2022, by registered mail to the rental unit and that Tracking Number 575 relates to this. The Landlord submitted the tracking information for Tracking Number 575 showing it was unclaimed after two notice cards were left.

The Agent sought an Order of Possession effective on two days notice to the Tenant and stated that two months of rent is outstanding.

Analysis

The Notice was issued pursuant to section 47 of the *Act*.

The Notice was served on the Tenant in accordance with section 88(c) of the *Act*. The Tenant is deemed to have received the Notice September 17, 2022, pursuant to section 90(a) of the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*.

I find the Tenant did not dispute the Notice within 10 days of being deemed to have received it. Again, the Tenant's Application cannot relate to the Notice because it was filed prior to the Notice being issued.

Pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted the Notice and had to vacate the rental unit October 31, 2022, the effective date of the Notice.

I also note that the Landlord had grounds to issue the Notice based on five late rent payments in 2022 (see RTB Policy Guideline 38).

The Landlord is issued an Order of Possession pursuant to section 55(2) of the *Act*. The Order of Possession is effective two days after service on the Tenant.

Given the Landlord has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is awarded \$100.00 and is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: January 23, 2023

Residential Tenancy Branch