



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, OPC, FFL

Introduction

At the end of October 2022, the Landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. In their application, they asked me for the following orders against the Tenant:

1. An order that the tenant move out because they haven't paid rent.
2. An order that the tenant move out because they have been disruptive.
3. An order that the tenant reimburse the Landlords for the filing fee for their application.

The Landlords attended the hearing, represented by an agent. The Tenant did not attend this hearing.

Preliminary Matters

The hearing began at 1100 hours on 6 March 2023, as scheduled.

I left open the teleconference-hearing connection throughout the hearing, which concluded at 1138 hours. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords and I were the only ones who had called into this teleconference.

I proceeded with this hearing in the absence of the Tenant. This is why I did so:

1. The Landlords provided affirmed testimony that they served the notice of this hearing on the Tenant by sending a copy of it by registered mail to the address at which the Tenant resides.
2. They supported this testimony with documentation of the registered mail, showing the correct address for the unit at which the Tenant resides (*i. e.* the unit that is the subject of this dispute).

Rule 7.3 of the RTBs Rules of Procedure reads:

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.

Relying upon this rule, and satisfied by the evidence provided by the Landlords that the Tenant had been properly served with notice of this hearing, I decided to conduct the hearing in the absence of the Tenant.

Issues to be Decided

Must the Tenant move out?

Are the Landlords entitled to have the Tenant repay them the \$100 fee to file for this application?

Background and Evidence

Based on a copy of a tenancy agreement filed by the Landlords [the 'Agreement'], I accept that:

1. the Tenant began renting a unit from the Landlords in 2015;
2. the Tenant agreed to pay rent on or before the first calendar day of each month;
and
3. the Tenant paid to the Landlords \$485.00 as a security deposit.

By 2022, the Landlords desired to end this tenancy for a variety of issues.

The Landlords' evidence was that they served a one-month notice to end tenancy on the Tenant on 13 October 2022 [the 'Notice']. The Notice was in the form approved by

the RTB. The Landlords signed and dated this Notice, which also gave the address of the rental unit, and stated the grounds for ending the tenancy.

The Landlords effected service of this Notice by attaching a copy of it to the door of the rental unit. A witness observed the service of this Notice. The Landlords corroborated this evidence with copies of the Notice and with a signed 'Proof of Service' form (a form approved by the RTB). I accepted this evidence.

I saw no evidence that the Tenant disputed this Notice. And the RTB has no record of the Tenant filing such a dispute.

Later, the Landlords served the Tenant with two more notices to end tenancy. These two notices were ten-day notices to end tenancy. The first they served on 2 January 2023, and the second they served on 13 January 2023 [the 'Ten-day Notices'].

Analysis

The Notice recorded the tenancy ending on 30 November 2022 [the 'End Date']. This End Date is not earlier than one month after the Tenant received the Notice (the Tenant having received the Notice on 3 December 2022, *per* section 90 of the *Residential Tenancy Act* [the 'Act']). And this End Date is the day before the day rent was payable (*i.e.* 1 December 2022).

Section 47 (4) of the Act required the Tenant to dispute this Notice no later than 14 December 2022. But the Tenant did not dispute this Notice. Therefore, *per* section 47 (5) of the Act, I presume that the Tenant accepted that the tenancy ended on the effective date of the Notice. With the tenancy at an end, the Tenant must move out of the rental unit.

Because I find that the tenancy ended on 30 November 2022, the subsequent Ten-day Notices are moot. And so I set aside the Ten-day Notices.

The Landlords have succeeded in their application, and so they are entitled to recover their filing fee, and may deduct it from the security deposit.

I make no finding, however, on any allegations that the Tenant breached the Agreement. On a review of the Agreement, I note incidentally that the Landlords have

drafted it to include a clause purporting to claim \$300.00 from the Tenant as liquidated damages in the event of a breach of the Agreement. Should the Landlords seek to rely upon this clause, then this would form the basis of a separate application to the RTB. Without such an application (or explicit, written confirmation from the Tenant), the Tenant is entitled to the return of the remainder of the \$485.00 deposit (*i.e.* to the return of \$385.00).

Conclusion

I grant an Order of Possession to the Landlords, *per* s. 55 (2) (b) of the Act. This order is effective two days after the Applicant serves it upon the Tenant.

I also order that the Tenant reimburse the Landlords \$100.00 for the filing fee, *per* section 72 (1) of the Act. I authorise the landlord to retain \$100.00 of the Tenant's security deposit in satisfaction of this debt owing to the landlord.

I make this decision on authority delegated to me by the Director of the RTB under section 9.1 (1) of the Act.

Dated: 15 March 2023

Residential Tenancy Branch