



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Codes AS CNC-MT FFL FFT OLC OPC

Introduction

The tenant made an application under the *Residential Tenancy Act* (“Act”) for an order cancelling a One Month Notice to End the Tenancy (“Notice”), for an order extending the time in which to dispute the Notice, for an order to assign or sublet the rental unit, for an order requiring landlord compliance, and, for a monetary order to recover the cost of their application.

The landlord made an application under the Act for an order of possession and for a monetary order to recover the cost of their application.

A dispute resolution hearing convened at 9:30 AM on November 16, 2023. The tenant did not attend the hearing. As such, their application is dismissed without leave to reapply. Two representatives from the corporate landlord attended the hearing.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the cost of the application fee?

Background and Evidence

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The tenancy began on February 15, 2019. Monthly rent is \$1,530.00 and the tenant paid a \$750.00 security deposit. There is a written tenancy agreement in evidence. The tenancy agreement expresses prohibits conducting any sort of commercial activity out of the rental unit.

The landlord's application's particulars are as follows:

Tenant is doing commercial activity - short term rental through Airbnb. Per tenancy agreement and city bylaws explicitly forbid Airbnb or any form of short-term rentals within the building. After caution notice, tenant has shown no intention of discontinuing. This short-term rental creates potential threat to our residents in the building by passing around main entrance key and parking lot fob. In light of these circumstances, we are left with no choice but to request the possession of the unit.

On July 7, 2023, the Notice was served on the tenant by registered mail. The tenant's application indicates that he received the Notice, but that he did not file his application to dispute the Notice within time because, as described in his application:

I filed late because I have been infirm on long-term disability, and this eviction notice was served to me while I have been in the midst of dealing with increasingly difficult symptoms of my disability. I am also working with the crown council [sic] as a victim of criminal harassment which made it difficult to submit this in time due to the energy it took.

The tenant did not file his application until August 11, 2023.

A copy of the Notice was in evidence before me, it was completed in full, all pages were served on the tenant, and it thus meets the form and content requirements of section 52 of the Act.

Analysis

A notice to end tenancy given under section 47 of the Act (in this case, under subsection 47(1)(h)) must be disputed within 10 days of being received by a tenant (see section 47(4) of the Act).

If a notice to end tenancy is not disputed within those 10 days, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice (in this case, the effective date was August 31, 2023).

Section 55(2)(b) of the Act states that a landlord may request an order of possession when 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.

In this dispute, the landlord served the Notice on July 7, 2023, the tenant did not dispute the Notice within 10 days, and the time for making that application has long since expired. The tenant did not attend the hearing to provide any testimony, submissions, or argument as to whether exceptional circumstances give rise to the extending of the ten-day time limit to dispute the Notice. Thus, I make no extension under section 66(1) of the Act.

Applying the law to the facts, the evidence leads me to find on a balance of probabilities that the landlord is entitled to an order of possession under section 55(2)(b) of the Act. A copy of the order of possession is issued with this decision to the landlord, who must serve a copy upon the tenant.

The landlord is entitled to recover the cost of its \$100 application fee pursuant to section 72 of the Act. To this end, the landlord is authorized to retain \$100 of the tenant's security deposit, under section 38(4)(b) of the Act.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord's application is granted. The landlord is granted an order of possession and awarded \$100 for the cost of its application.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 16, 2023

Residential Tenancy Branch