



DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession based on the One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for this application from the Tenants under
- section 72 of the Act

The Tenants and the Landlord's agents attended the hearing and confirmed service of the Landlord's and Tenants' Notice of Dispute Resolution Proceeding and evidence.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recover the filing fee for their application from the Tenants?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties testified that this tenancy began on March 1, 2021, with a monthly rent of \$1,501.18, due on the first day of the month. The Tenants paid a security deposit of \$725.00 and a pet deposit of \$725.00.

The One Month Notice was sent to the Tenants by registered mail on November 6, 2023. The Canada Post tracking number shows that it was delivered on November 8, 2023. The Tenants are deemed served on November 11, 2023, in accordance with

section 90 of the Act. The Canada post tracking number was provided by the Landlord and I have included it on the cover page.

At the outset of the hearing, the Landlord raised the issue that the Tenants did not apply to dispute the One Month Notice within ten days.

The Tenants indicated that they applied late because they were waiting to receive confirmation of income documents.

The Tenants' application was not completed until November 24, 2023.

Both parties confirmed that February 2024 rent has not been paid.

Analysis

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a Landlord may issue a Notice to End Tenancy for Cause to a Tenant if the Landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the Tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the Tenant does not file an application within ten days, they are presumed under section 47(5) of the Act to have accepted the Notice.

I deemed the Tenant served with the One Month Notice on November 11, 2023, in accordance with section 90 of the Act. The Landlord provided the Canada Post tracking number and it has been included on the cover page.

The Tenants did not apply to dispute the One Month Notice within ten days and are therefore, conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the One Month Notice. The Tenants testified that they filed late due to them waiting to receive confirmation of income documents. This does not rise to an extenuating circumstance and is past the effect date of the notice. The One Month Notice dated November 6, 2023, meets the form and content requirements under section 52 of the Act. The grounds provided in the One Month Notice are valid.

For the above reasons, the Tenants' application for cancellation of the One Month Notice under section 47 of the Act is dismissed, without leave to reapply.

I find that the Landlord is entitled to an Order of Possession, pursuant to section 55 of the Act, effective seven days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

As the Landlord was successful in their application, the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. I order the Landlord to retain \$100.00 from the Tenants' security deposit.

Conclusion

The Landlord is granted an Order of Possession and is awarded the \$100.00 filing fee paid for their application.

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: February 15, 2024

Residential Tenancy Branch