



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WOODSMERE HOLDINGS CORP and
[tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to applications by the Landlord and the Tenants.

The Landlord's application is seeking orders as follows:

1. For an Order of Possession; and
2. To recover the cost of filing the application.

The Tenants' application is seeking orders as follows:

1. To Cancel a One Month Notice for Cause, issued on April 23, 2024 (One Month Notice); and
2. To recover the cost of filing the application.

Only the Landlord's agents appeared and are noted on the covering page of this Decision.

Service

The Landlord's agents stated that they were not served with the Tenant's application and only found out about it when they had filed their own application after the effective date of the One Month Notice. The Landlord's agents stated that the Tenant has said they have vacated and wanted their rent back for June 2024; however, the Tenant has not moved out their belongings.

In this case, I am not satisfied that the Tenant served the Landlord in accordance with the Act. The Tenant did not submit a proof of service as required or attend the hearing to provide testimony. Filing an application without serving the other party has the same

effective as if that application was never made. Therefore, I find I must dismiss the Tenant's application without leave to reapply.

The Landlord's agent testified that they served the Tenant a copy of their Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on June 14, 2024. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the Tenant has been duly served in accordance with the Act.

Preliminary Issue

I note the Tenant has indicated in their application that V.R. is a tenant; however, I have reviewed the tenancy agreement and V.R. is listed as an occupant. Occupants have no legal rights or obligations under the Act. Therefore, I have removed V.R. from the style of cause on the covering page of this Decision.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on May 1, 2020. Rent in the amount of \$1,739.00 was payable on the first of each month. A security deposit of \$840 and a pet damage of \$840.00 was paid by the tenant.

The Landlord's agent testified that the Tenant was served with the One Month Notice, by posting to the door on April 23, 2024. Filed in evidence is a proof of service.

The Notice explains the Tenant had ten days to dispute the One Month Notice. The Notice further explains if the Notice is not disputed within the ten days that the tenant is presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice.

Analysis

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

I accept the evidence of the landlord that the One Month Notice was completed pursuant to section 47 of the Act. A copy of the One Month Notice was filed in evidence for my review and consideration.

I find the One Month Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

Further, I accept the evidence of the Landlord that the Tenant was served with the One Month Notice, by posting to the door on April 23, 2024. I find the Tenant was deemed served three days later, April 26, 2024. I find the Tenant has until May 3, 2024, to file their application to dispute the One Month Notice and serve the Landlord.

The Tenant did not make their application until May 6, 2024, which is outside the statutory time limit and did not serve the Landlord, which I have previously dismissed the Tenant's application for lack of service.

I am satisfied based on the landlord's evidence that the landlord has met the statutory requirements under the Act to end a tenancy.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on 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.

I find that the landlord has established a total monetary claim of \$100.00 to recover the filing fee from the Tenant for this application. I order that the Landlord retain the amount of \$100.00 from the Tenant's security deposit in full satisfaction of the claim.

Conclusion

The Tenant's application is dismissed without leave. The Landlord is granted an Order of Possession and is entitled to \$100.00 from the security deposit to recover the cost of the filing fee.

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: June 26, 2024

Residential Tenancy Branch