



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction and Preliminary Matter

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession based on cause, a Monetary Order for Unpaid rent and to recovery the filing fee.

The Landlord testified that he personally served the Tenant with the Notice of Dispute Resolution Hearing and Application for Dispute Resolution on August 19, 2016. Based on the Landlord's undisputed testimony I find the Tenant was served with Notice of the Hearing and I proceeded in his absence.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to the Landlord's monetary claim for unpaid rent. The Landlord was given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. The Landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

Issues to be Decided

1. Should the Landlord be entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began approximately two years ago.

The Landlord testified that a physical altercation occurred between the renter above, and the subject Tenant which resulted in both renters being restrained from having contact with the other.

The Landlord issued a 1 Month Notice to End Tenancy for Cause on May 26, 2016 (the "Notice") noting the reasons as "the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord." On the Landlord's Application for Dispute Resolution, as well as during his testimony he stated that he personally served the Notice on the Tenant on June 30, 2016.

The Notice informed the Tenant as follows:

"You have the right to dispute this Notice within 10 days after you receive it, by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an Application, but if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (you can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court."

The Landlord testified that the Tenant failed to make an application to dispute the Notice.

Analysis

Based on the documentary evidence, the undisputed testimony of the Landlord, and on the balance of probabilities, I find the following.

The Tenant did not apply to dispute the Notice and is conclusively presumed, pursuant to section 47(5) to accept the end of the tenancy and must vacate the rental unit. The Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* which will be effective at **1:00 p.m.**, two days after service. This Order must be served on the Tenant and may be filed in the Supreme Court and enforced as an Order of that court.

As the Landlord's application had merit, I grant the Landlord the recovery of the \$100.00 filing fee. I grant the Landlord a monetary Order pursuant to section 67 of the *Act* for the \$100.00 filing fee. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

Conclusion

The Landlord is entitled to an Order of Possession. I grant the Landlord a monetary Order under section 67 for the \$100.00 filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 13, 2016

Residential Tenancy Branch