



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), for an order of possession, an order to recover the cost of filing the application from the tenant.

Both parties appeared.

The landlord stated that they served the tenant with their application for dispute resolution, notice of hearing and evidence on August 1, 2020, by posting to the door of the residence. The landlord on August 3, 2020, submitted a photograph of the documents posted to the door, which shows the rental unit address. I find the tenant was deemed served on August 6, 2020, three days after it was posted.

The tenant stated that the one of the occupants notified them that there was a package; however, they did not pickup the package from the premise until August 26, 2020.

I am not satisfied that the tenant has submitted any evidence to rebut the deemed services provisions under the Act, not retrieving the documents from one of the occupants living in the rental unit is not sufficient evidence to override the deemed service provision under the Act, as this simply could be the neglect of the tenant.

The tenant stated that they did not receive the documents until August 26, 2020, when they picked up the documents from one of the occupants. The tenant stated that is why they filed their evidence on August 28, 2020, which was sent on the same date to the landlord by registered mail. A copy of the Canada post tracking number was provided. The Canada post tracking shows the documents were not received by the landlord prior to the commencement of the hearing. I find the tenant’s evidence does not comply with the Residential Tenancy Branch Rules of Procedures as they had to ensure the other

party received their evidence no less than seven days before the hearing. Therefore, I have excluded the tenant's evidence.

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

Based on the testimony of the landlord, I find that the tenant was served with a 1 Month Notice to End Tenancy for Cause (the "Notice"), issued on July 4, 2020, which was sent to the address in the tenancy agreement that is rented by the tenant and it was successfully delivered on July 8, 2020. I find the tenant was served on July 8, 2020.

The Notice explains the tenant had ten days to dispute the 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, which was August 31, 2020.

The tenant stated one of the occupants must have accepted the document on their behalf.

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 Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 47 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the 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 Notice in compliance with the service provisions under section 88 of the Act, which the document was successfully delivered on July 8, 2020 to the tenant. Even if I accept the

evidence of the tenant that one of their occupants accepted it on their behalf does exempt the tenant from the Act. That is an issue between the tenant and occupant.

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

The tenant did not apply to dispute the Notice and therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on August 31, 2020, and the tenant is now overholding the premise as an occupant.

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 failed to dispute the Notice. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep a portion of the security deposit in full satisfaction of the claim.

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: September 01, 2020

Residential Tenancy Branch