



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause dated March 4, 2022, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agents IN and PL attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:13 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am I confirmed that the correct call-in number and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord's agents and I were the only ones who had called into the hearing.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord's agents testified that the notice of dispute resolution proceeding package and the Landlord's documentary and digital evidence (collectively, the "NDRP Package") were sent to the Tenant via registered mail on May 28, 2022. The Landlord's

agents confirmed that the Landlord's digital evidence was sent in a USB stick as part of the NDRP Package. The Landlord submitted a Canada Post registered mail receipt with a tracking number in support. That Canada Post tracking number is referenced in the cover page of this decision. Based on the foregoing, I find the Tenant was served with the NDRP Package in accordance with sections 88(c) and 89(2)(b) of the Act. I further find that pursuant to section 90(a) of the Act, the Tenant is deemed to have received the NDRP Package on June 2, 2022.

Having found the Tenant to have been deemed served with notice of this hearing, I directed that this hearing continue in the absence of the Tenant.

Issues to be Decided

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

Background and Evidence

This tenancy commenced on April 1, 2021. Rent was \$1,850.00 due on the first day of the month. The Tenant paid a security deposit of \$925.00 and a pet damage deposit of \$925.00. A copy of the tenancy agreement has been submitted into evidence.

The Landlord also submitted a copy of the One Month Notice into evidence. The One Month Notice is dated March 4, 2022 and has an effective date of April 8, 2022. It states, among other things, that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord submitted documentary and video evidence relating to noise and pet complaints against the Tenant.

The Landlord's evidence indicates that a copy of the One Month Notice was posted to the Tenant's door on March 4, 2022. The Landlord submitted a signed and witnessed Proof of Service document in support.

The Landlord's agents testified that the Tenant sent an email on June 12, 2022, stating she had moved out of the rental unit.

The Landlord's agents testified that the Tenant gave consent for the Landlord to retain the Tenant's security and pet damage deposits for damage to the rental unit.

Analysis

1. Is the Landlord entitled to an Order of Possession?

I accept the Landlord's evidence that the Tenant sent an email on June 12, 2022 stating she had moved out of the rental unit. Therefore, I find it is not necessary to grant an Order of Possession to the Landlord under these circumstances, notwithstanding my finding below that the Landlord would be entitled to such an Order under the Act.

2. Is the Landlord entitled to recover the filing fee?

Section 72(1) of the Act states:

Director's orders: fees and monetary orders

72(1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

For reasons that follow, I find the Landlord is entitled to recover its filing fee under section 72 of the Act.

I have reviewed a copy of the One Month Notice and find that it complies with the requirements of section 52 of the Act in form and content. I accept the Landlord's evidence that a copy of the One Month Notice was posted to the Tenant's door on March 4, 2022. As such, I find the Tenant was served with a copy of the One Month Notice in accordance with section 88(g) of the Act. Pursuant to section 90(c) of the Act, I find the Tenant is deemed to have received the One Month Notice on March 7, 2022.

I further find that the Tenant did not apply to dispute the One Month Notice within the 10-day period prescribed by section 47(4) of the Act, or by March 17, 2022. Although I find the effective date of the One Month Notice to not comply with the requirements of section 47(2) of the Act in this case (since it is not the day before the day that rent is due), I find the effective date of the One Month Notice is automatically deemed corrected from April 8, 2022 to April 30, 2022 under section 53 of the Act.

Since the Tenant did not apply to dispute the One Month Notice, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the One Month Notice, or April 30, 2022, pursuant to section 47(5) of the Act.

Sections 55(2)(b) and 55(4) of the Act state as follows:

Order of possession for the landlord

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) 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; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

I find that the Landlord was within its rights to apply for an Order of Possession under sections 55(2)(b) and 55(4). I find the Landlord would be entitled to an Order of Possession under these sections. Furthermore, I accept the Landlord's evidence that the Tenant did not leave the rental unit until on or around June 12, 2022.

Based on the foregoing, I exercise my discretion under section 72(1) of the Act and order the Tenant to reimburse the Landlord for the filing fee incurred in making this application.

Conclusion

Pursuant to section 72 of the Act, I grant the Landlord a Monetary Order in the amount of \$100.00 for the filing fee awarded in this decision. This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court, and enforced as an Order of that Court.

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 20, 2022

Residential Tenancy Branch