



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 to obtain an Order of Possession for Cause and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation and or tenancy agreement?
2. Has the Landlord issued and served a valid 1 Month Notice to End Tenancy for cause?
3. If so, has the Landlord met the burden of proof to end this tenancy and obtain an Order of Possession?

Background and Evidence

The Landlord affirmed that she entered into a verbal tenancy agreement with the Tenants that began on March 1, 2008. Rent is payable on the first of each month in the amount of \$800.00 and the Tenants made payments towards the \$350.00 security deposit which was paid in full by October 2009.

The Tenant confirmed that they have repeatedly paid their rent late after using some of their income assistance last year to have a good Christmas. He confirmed the Landlord has been good at working with them however she now wants them to move out. He confirmed receipt of the 10 Day Notices and the 1 Month Notice to End Tenancy.

The Landlord confirmed she personally served the Tenants with the 1 Month Notice on

November 1, 2011 and she wants to proceed with ending this tenancy. The Landlord advised that there is still outstanding rent for November and December 2011.

The Tenant confirmed that the rent remains outstanding and that he will need to request another cheque to be issued by Income Assistance.

Analysis

I have carefully considered all of the testimony and evidence before me which included, among other things, copies of seven 10 Day Notices issued between February 7, 2011 and October 2, 2011; a 1 Month Notice to End Tenancy dated November 1, 2011, and photographs of the rental unit submitted by the Landlord.

The 1 Month Notice was issued for the following reasons:

- 1) Tenant is repeatedly late paying rent; and
- 2) Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- 3) Tenant has caused extraordinary damage to the unit/site or property/park

Section 53 of the Act provides as follows:

(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement (a) that complies with the required notice period, or (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Upon review of the Notice to End Tenancy, I find that it was served upon the Tenants in a manner that complies with the Act and that the effective date of Notice is automatically corrected to December 31, 2011 pursuant to section 53 of the Act.

Section 47 (b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Upon consideration of the evidence presented to me pertaining to the first ground for issuing the Notice, repeated late payment of rent, I find the Landlord had valid reasons for issuing the Notice and I hereby grant the Landlord an Order of Possession effective December 31, 2011.

Having granted the Order of Possession on the first ground, there is no need to provide an analysis for the remaining two grounds the Notice was issued.

The Landlord has been successful with her application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective December 31, 2011, at 1:00 p.m. This Order is legally binding and must be served upon the Tenants.

The Landlord may retain the one time award of \$50.00 from the Tenants' security deposit.

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: December 05, 2011.

Residential Tenancy Branch