



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing, all of which has been reviewed and is considered in this Decision. Despite being served with the Landlord's Application for Dispute Resolution, evidence and notice of hearing documents by registered mail on February 8, 2012, the tenant did not attend. The landlord's agent testified that the notice of hearing was received from the Residential Tenancy Branch on February 6, 2012, and the documents were mailed on February 8, 2012. The landlord's agent also provided a tracking number for that registered mail and testified that the tenant was seen with the documents in hand on February 9, 2012. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 1, 2011. Rent in the amount of \$625.00 per month is payable in advance on the 1st day of each month. On August 19, 2011 the landlord collected a security deposit from the tenant in the amount of \$312.50 and no pet damage deposit was collected.

The landlord's agent further testified that prior to moving into the rental unit a tenancy agreement was prepared, a copy of which was provided for this hearing, and it shows

that the tenant would be residing in the rental unit with the tenant's adult son. The tenant did not remain in the rental unit, but left the son there. The tenant moved in with a common-law spouse into a unit in a building next door to this rental unit, although the landlord's agent does not know when. The landlord's agent had attended at the rental unit on December 23, 2011 to give a Caution Notice about noise complaints. At that time, an older man answered the door and advised that the tenant didn't live there. The landlord's agent spoke to the tenant on December 28, 2011 who admitted that the rental unit had been rented by the tenant, not for the tenant, but for the tenant's son. Further noise complaints had been received, and the landlord's agent hired security personnel to prevent further disturbances for other tenants.

The landlord's agent served the tenant with a 1 Month Notice to End Tenancy for Cause on December 28, 2011, a copy of which was also provided for this hearing, by posting it to the door of the rental unit. The notice is dated December 28, 2011 and contains an expected date of vacancy of January 31, 2012. The notice states that: "Tenant has assigned or sublet the rental unit/site without landlord's written consent." The rental unit has not been vacated, and no one has paid any rent for the month of February, 2012.

The landlord requests an Order of Possession as well as a monetary order in the amount of \$675.00 for February's rent and recovery of the \$50.00 filing fee for the cost of this application.

Analysis

The *Residential Tenancy Act* states that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit. Further, if the landlord has cause, the landlord may give the tenant one month's notice to vacate the rental unit. The tenant then has 10 days to dispute the notice from the date the tenant receives, or is deemed to have received the notice. If the tenant does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

In this case, the landlord did not consent in writing that the tenant sublet or assign the rental unit, and therefore, I find that the landlord had cause to issue the notice to end tenancy. I accept the testimony of the landlord's agent that the notice was served by posting it to the door of the rental unit on December 28, 2011. Documents served in that fashion are deemed to have been served 3 days after posting, and I find that the tenant was deemed to have been served on December 31, 2011. Further, the tenant has not disputed the notice, and I find that the tenant is conclusively presumed to have accepted that the tenancy ended on January 31, 2012.

I further find that because the tenant, or the tenant's son, have not vacated the rental unit, the landlord is entitled to a monetary order for the equivalent of one month's rent for loss of revenue for over-holding. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application. The *Act* also states that where a tenant is ordered to pay any amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant, and I find it prudent to make such an order in this case. I therefore order the landlord to keep the security deposit in the amount of \$312.50, and I grant a monetary order in favour of the landlord for the difference in the amount of \$362.50, which includes the filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the security deposit of \$312.50 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$362.50.

These orders are final and binding on the parties and may be enforced.

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: February 24, 2012.

Residential Tenancy Branch