



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause and for a monetary order for recovery of the filing fee for the cost of this application.

An agent for the landlord company and the tenant attended the hearing and each gave affirmed testimony. The landlord provided 2 evidence packages but did not deliver a copy of the second package to the tenant. The landlord's agent indicated that the majority of the documents contained in that evidence package are documents that the tenant already has. Parties must serve each other with all evidence that they intend to rely upon at the hearing at least 5 days prior to the commencement of the hearing even if a party believes the other already has the evidence. It is important that an Arbitrator is satisfied that the evidence provided to the Residential Tenancy Branch is identical to the evidence that each party has in their possession, and therefore each document that a party intends to rely upon must be provided to the other party in accordance with the *Residential Tenancy Act* and the Rules of Procedure. I find that the second evidence package has not been served in accordance with the *Act* or the Rules of Procedure, and that evidence is not considered in this Decision.

The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision with the exception of the evidence package of the landlord that was not provided to the tenant.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on August 1, 2009 and expired on July 31, 2010 and then reverted to a month-to-month tenancy, and the tenant still resides in the renal unit. Rent in the amount of \$1,310.00 per month is currently payable in advance on the 1st day of each month and a copy of a tenancy agreement which confirms that date has been provided for this hearing. On July 4, 2009 the landlord collected a security deposit from the tenant in the amount of \$640.00 which is still held in trust by the landlord.

The landlord's agent further testified that the rent for February and March, 2013 were late and late fees were paid for those two months pursuant to the tenancy agreement. During 2012 the tenant was late with the rent in April and May but the landlord's agent does not know the date any of those payments were made. The landlord has provided copies of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities for the months of June and December, 2012 as well as February and March, 2013. The landlord's agent also testified that at the time that the application for dispute resolution was filed, rent for April, 2013 was not yet due, however the tenant has not yet paid April's rent.

The landlord has also provided a copy of a tenant ledger that shows that rent has been consistently applied to the tenant's account later than the first day of each month, however not all of those months show a late fee, and there is no evidence before me that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities except for the months listed in the preceding paragraph of this Decision.

The landlord's agent further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on April 2, 2013 which contained an expected date of vacancy of May 2, 2013 but a copy of the notice has not been provided for this hearing. The reason for ending the tenancy is stated to be that the tenant is repeatedly late paying rent.

The landlord applies for an Order of Possession for cause and recovery of the \$50.00 filing fee for the cost of the application.

The tenant testified that when rent payments are made on the 3rd of the month, the landlord issues a late payment notice. Sometimes the tenant pays rent in advance which is dependent on paydays and the tenant always keeps the manager notified.

The tenant further testified that on numerous occasions the tenant has requested repairs to the landlord's agents which seem to have fallen on deaf ears. No repairs have been completed and as a result, the tenant has suffered illnesses, although no evidentiary material has been provided by the tenant, and the tenant has not made an application for dispute resolution.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement. If the tenant fails to do so, the landlord may issue a notice to end tenancy for unpaid rent. The tenant then has 5 days to pay the rent in full, in which case the notice has no effect.

A landlord may also issue a 1 Month Notice to End Tenancy for Cause if a tenant is repeatedly late paying rent, and Policy Guideline 38, which is contained on the Residential Tenancy Branch website states that 3 late payments are the minimum number of late payments that qualify for such a notice to be issued. It also states that where there are late payments that are far apart, an arbitrator may determine that the tenant cannot be said to be "repeatedly" late.

In this case, the landlord's agent's testimony included late payments in April and May, 2012 as well as February and March, 2013 but the landlord was not able to state when rent for those months were paid.

The *Act* also requires that the landlord use the approved form of a notice to end tenancy, and in the absence of a copy of such notice, I cannot be satisfied of its validity, and as such, the landlord's application for an Order of Possession cannot succeed. The landlord is at liberty to issue another notice to end tenancy but must provide a copy as evidence if applying for an Order of Possession and must be prepared to testify as to the dates that rent was paid.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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: April 17, 2013

Residential Tenancy Branch