



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause.

An agent for the landlord company and the tenant attended the conference call hearing and each gave affirmed testimony. The landlord provided evidentiary material prior to the hearing to the Residential Tenancy Branch, but the tenant testified that he had only received the notice of hearing, Landlord's Application for Dispute Resolution and Residential Tenancy Branch Fact Sheets, and that no evidence was received. The landlord's agent was unclear with respect to what was served, stating at one point that the agent had personally put the package together and it was served by another agent of the landlord, and at another point stated that the tenant already had the evidence, such as the notice to end tenancy, breach letters and tenancy agreement. The landlord's agent applied to adjourn the matter to allow delivery of the evidence to the tenant but the tenant opposed that adjournment.

In the circumstances, I cannot make a finding that the tenant has received all of the evidence, and I find that the tenant may be prejudiced by an adjournment, and therefore the evidence is not considered. However, the tenant has agreed that he has received the 1 Month Notice to End Tenancy for Cause dated February 7, 2014, and I admit that evidence only.

The parties were given the opportunity to cross examine each other on the evidence admitted and testimony given, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on October 4, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$375.00 per month is payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$187.50, which is still held in trust by the landlord.

The landlord's agent further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on February 7, 2014. She testified that she attended the rental unit with another staff member to serve the tenant, and the door to the unit was open. She called the tenant, but it was very dark in the 1-room suite, and a small sink is beside the door. The landlord's agent told the tenant she was placing a notice to end tenancy in the sink, the tenant responded with some foul language, and the landlord's agent left the notice in the sink. It was dated February 7, 2014 and contained an effective date of vacancy of February 31, 2014. The landlord's agent read into evidence the reasons for issuing the notice:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord's agent testified that the tenant is very aggressive and has intimidated and threatened other residents of the complex and the staff. The landlord's agents and other tenants have repeatedly asked the tenant to turn down his music, and he responds by swearing, yelling and threatening to sue. The last time a music complaint was made was on or about February 6, 2014 by another resident. However, as late as March 6, 2014 at about 4:00 a.m. the landlord's agent and the police were called to an incident at the residential complex about an assault. The police wanted a copy of the footage, which was provided, and shows that a staff member kicked the tenant's door and the tenant exited his rental unit and wrestled the female staff member to the ground. She defended herself by hitting him with a broom.

The landlord's agent testified that all staff are afraid of him, and a staff member who was supposed to work today but has not shown up, left a letter stating that the staff member did not feel safe working in that environment because of the aggressive, rude behaviour of the tenant.

The tenant testified that the landlord doesn't like people who stick up for themselves. The law for noise complaints is after 10:00 p.m., and the tenant never played loud music after that time. The police told the tenant that the landlord has no business calling police about noise before 10:00 p.m. Further, there have been no noise complaints for over a month and the tenant sold his stereo 2 or 3 weeks ago.

With respect to the incident on March 6, 2014, the tenant testified that the staff member kicked the door of the rental unit at 4:30 in the morning, and he responded, and she hit him with a broom. When police arrived, she was arrested, not the tenant.

The tenant further testified that he received the notice to end tenancy which the landlord left in the sink in the rental unit. He testified that he didn't read it, but also testified that he didn't dispute it because the effective date was not a valid date. The tenant knows the law and knew it was invalid.

In rebuttal, the landlord's agent testified that the staff member who was arrested was not arrested for the incident on March 6, 2014, but was arrested due to an outstanding warrant for an unrelated matter. The staff member has not been charged with respect to this incident and is not on any conditions to stay away from the complex or the tenant.

Analysis

The *Residential Tenancy Act* states that a tenant who is served with a 1 Month Notice to End Tenancy for Cause has 10 days to dispute the notice. If the tenant fails to do so, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The *Act* also states that a notice to end tenancy given by a landlord can be served by posting it to the door of the rental unit or another conspicuous place, or by giving it directly to the tenant. In this case, I find that the landlord has correctly served the tenant by leaving the notice to end tenancy in a conspicuous place. The *Act* states that documents served in that manner are deemed to have been served 3 days later, and I find that it was deemed to have been served on February 10, 2014.

The *Act* also states that the effective date of vacancy contained in a notice to end tenancy must be no sooner than one month after it is given, and must end the tenancy at the end of the following month if rent is payable on the first day of a month. In this

case, I accept the undisputed testimony of the landlord that the notice was left on February 7, 2014, and that rent is payable on the 1st day of each month. Therefore, the effective date of vacancy in the notice, even though it is not a valid date, could not be before March 31, 2014. The *Act* states that incorrect effective dates in a notice to end tenancy are automatically changed to the nearest date that complies with the *Act*, and I find that regardless of what date was written on the notice to end tenancy, that date is during the month of February, 2014 and is before the date permitted by law, and I find that the effective date of vacancy is changed to March 31, 2014.

I further find that the tenant did not dispute the notice, and is conclusively presumed to have accepted that the tenancy ends.

Therefore, I find that the landlord is entitled to an Order of Possession effective March 31, 2014 at 1:00 p.m.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application. I hereby order the landlord to retain \$50.00 from the security deposit currently held in trust.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective March 31, 2014 at 1:00 p.m.

I further order the landlord to retain \$50.00 from the security deposit currently held in trust as recovery of the filing fee.

This order is 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: March 10, 2014

Residential Tenancy Branch

