



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant both attended, each gave affirmed testimony and provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to question each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

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

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 testified that this month-to-month tenancy began about 8 years ago, and the landlord purchased the rental property during the tenancy. Rent in the amount of \$440.00 per month is payable in advance on the 1st day of each month, and there are no rental arrears. A written tenancy agreement has not been provided, however the landlord testified that it does exist. The previous owner collected a security deposit, but the landlord does not recall how much, guessing \$101.00 which is still held in trust on behalf of the tenant.

The landlord served the tenant with a 1 Month Notice to End Tenancy by posting it to the door of the rental unit on December 31, 2013. A copy of the notice has been

provided and it is dated December 31, 2013 and contains an expected date of vacancy of January 31, 2014. The reasons for issuing the notice are:

- 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:
 - jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The landlord further testified that the tenant has not served the landlord with an Application for Dispute Resolution disputing the notice, and the only documents served on the landlord by the tenant is the evidence package that the tenant has provided for this hearing. The evidence package does not contain an Application for Dispute Resolution.

The tenant testified that she did not know she was required to file an Application for Dispute Resolution to dispute the notice to end tenancy in order to have it cancelled. The tenant thought it was dealt with in a hearing that took place on February 17, 2014, and the tenant has provided a copy of the Decision. The Decision shows that the hearing was convened to deal with the tenant's amended application for specific relief. The "Issues to be Decided" section of the Decision states: "Is there a need to issue an Order requiring the Landlord to make repairs to the rental unit; is the tenant entitled to reduce the rent as a result of the need for repairs; and is the Tenant entitled to compensation as a result of the need for repairs?" The Decision states on Page 2 under the heading of "Preliminary Matters," second paragraph: "The landlord indicated that he wished to discuss his reasons for wishing to end the tenancy at this hearing. He was advised that the Landlord's desire to end the tenancy cannot be considered at this hearing, as this hearing Landlord has not filed an Application for Dispute Resolution in which he has applied for an Order of Possession nor has the Tenant filed an application to set aside a Notice to End Tenancy."

The tenant has also provided a copy of a Decision made by the director, Residential Tenancy Branch dated November 01, 2013 following a hearing on October 30, 2013. That hearing concerned an application by the tenant for orders for repairs and emergency repairs. The Decision also states that the tenant was subsequently served

with a 1 Month Notice to End Tenancy for cause, and the application was amended to include an application for an order cancelling a notice to end tenancy for cause. Neither party had provided the Residential Tenancy Branch with a copy of the notice. The hearing resulted in a mutual agreement between the parties, which included an agreement that the tenancy would continue and the landlord would make repairs. The date the notice to end tenancy was issued is not mentioned in the Decision.

The tenant also testified that she wants to move out of the rental unit, but the landlord did not have cause to issue the notice to end tenancy. Incidents have taken place which have attracted police involvement, and it's difficult to find another rental unit in the community.

Analysis

In this case, the landlord testified that the notice to end the tenancy was served on the tenant by posting it to the door of the rental unit on December 31, 2013. The tenant did not dispute that testimony. There were two hearings between the parties, and I find that the first hearing took place before the notice to end tenancy was issued. The other hearing resulted in a Decision that the notice to end tenancy was not considered or dealt with because the landlord had not applied for an Order of Possession and the tenant had not applied to cancel it.

The *Residential Tenancy Act* states that:

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The *Act* also states that documents served by posting to the door of the rental unit are deemed to have been served 3 days later, which I find to be January 3, 2014. The effective date of vacancy must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and must be effective on a date that is the day before the day in the month that rent is payable under the tenancy agreement. In other words, because rent is payable on the 1st day of the month, the

effective date of the notice must be no less than 1 month after January 3, 2014 and must be at the end of the month. The *Act* further specifies that incorrect effective dates are changed to the nearest date that complies with the *Act*, which I find to be February 28, 2014. The tenant did not dispute the notice and did not move out of the rental unit, and therefore, I find that the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 fee for the cost of filing.

Conclusion

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

I further grant the landlord a monetary order as against the tenant pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$50.00 as recovery of the filing fee.

These orders are final and binding 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: April 16, 2014

Residential Tenancy Branch

