



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNSD, 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; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant both attended the hearing, and the landlord called 2 witnesses. The parties and the witnesses each gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witnesses on the evidentiary material provided by the landlord and the testimony, 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?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages caused by the tenant to property of another tenant?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began somewhere around September, 2013, and the tenant still resides in the rental unit. Rent in the amount of \$625.00 per month is payable on the 1st day of each month, and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord. A written tenancy agreement was provided to the tenant, however an assistance worker took it, and it has never been returned to the landlord. The tenant receives subsidies for rent from 2 different sources who pay the landlord directly, and the landlord believed the worker took it for their purposes, but has never returned a copy.

The landlord further testified that the tenant has been continually late paying rent. One of the subsidy cheques sent to the landlord is consistently received before rent is due, but the other is consistently late, usually being received by the 4th day of the month.

The landlord also testified that the rental unit is an apartment within a rental complex that has 2 other units that are also rented. The landlord does not live on the property, but one of the tenants in another suite acts as manager of the complex on behalf of the landlord.

The landlord further testified that the tenant has been a problem since January, 2014 by scaring other tenants in the complex. Then in late May, 2014 the tenant destroyed the gardening and plant pots of another tenant and scratched her car. Photographs have also been provided by the landlord, and the landlord testified that the scratches are on all 4 sides of the vehicle as well as on the roof; virtually every surface. The police were called who took the tenant away, and the landlord was subsequently told by the victim that the tenant was taken to a hospital.

The landlord testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. The notice is dated May 31, 2014 and contains an expected date of vacancy of June 30, 2014. The document is signed by the landlord and contains an address of the tenant and an address of the landlord. Both pages of the 2-page form have been provided. The landlord attended at the hospital on May 31, 2014 to serve the notice to the tenant, but a nurse said the tenant wasn't able to deal with it and that the document would be delivered. The document was ultimately delivered the following day, and the landlord has provided a copy of a letter from a hospital staff to confirm that.

The landlord has not been served with an application for dispute resolution by the tenant.

The landlord claims an Order of Possession, and a monetary order for the deductible the other tenant will have to pay for the repair of the car and replacement costs for the damaged plant pots.

The landlord's first witness testified that she is also a tenant in the rental complex and manages the complex. She further testified that the landlord sent registered mail to the tenant but it was returned, so the landlord asked the witness to deliver it. The witness received a sealed envelope, and did not open it. The witness attended the rental unit and handed it to the tenant, but is not sure when; somewhere around the 18th of July, 2014.

The witness also testified that the police took the tenant away for damaging another tenant's property and car, and the police later told the witness that the tenant was taken to hospital.

The landlord's second witness testified that she is a tenant in the rental complex and confirmed the testimony that the tenant damaged her car and property, and that she fears the tenant.

The tenant stated that he had prepared a 750 word statement, which he was permitted to read as his testimony. The tenant stated that the notice to end tenancy he received had no move-out date on it.

The tenant agrees to the single incident respecting the damage to the other tenant's car and property, and testified that the outburst was due to a medical issue. The tenant did not know the other tenant, and fully intends to compensate her.

The tenant further testified that he was not able to dispute the notice to end tenancy because he was too ill; the tenant has a brain injury causing problems with dates and times and was in hospital from May 28 to July 11, 2014.

During cross examination the tenant testified that he was out of hospital on a day-pass but didn't have time to check the mail, although the landlord had told him there was mail for him. The landlord's manager gave the tenant the hearing package, but the notice to end tenancy that the tenant received did not have an effective date of vacancy.

The tenant asks that the notice to end tenancy not be upheld.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute it by filing an application for dispute resolution. 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 and must move out by that date. I have no discretion in that regard.

In this case, I have reviewed the letter of the hospital staff, and I am satisfied that the tenant was served with the notice on June 1, 2014.

I have reviewed the notice and find that it is in the approved form and contains information required by the *Residential Tenancy Act*.

The *Act* also states that the notice must be served the day before the date rent is payable under the tenancy agreement, and must be effective on a date that is no less than one month after that. The tenant testified that the notice has no effective date, but has not provided a copy of what he received. The landlord has provided a copy and testified that it is a copy of what was served. In any event, it is clear that the tenant didn't receive it the day before the day rent is payable, and therefore the effective date of vacancy is incorrect.

The *Act* further states that incorrect effective dates contained in a notice to end tenancy are changed to the nearest date that complies with the *Act*, which I find is July 31, 2014. The tenant did not dispute the notice and did not move out of the rental unit. I therefore find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession.

With respect to the landlord's claim for a monetary order for compensation to another tenant, I have jurisdiction to award monetary orders to landlords and tenants, but I find that the damages suffered by another tenant are not within the jurisdiction of the *Residential Tenancy Act*. Therefore, that application and the application for an order permitting the landlord to keep the security deposit in partial satisfaction of that claim are both dismissed without leave to reapply.

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

Conclusion

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

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The landlord's application for an order permitting the landlord to keep the security deposit in full or partial satisfaction of the landlord's claim for a monetary order herein is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 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: August 06, 2014

Residential Tenancy Branch

