



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF
 CNR, CNC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities, for an order cancelling a notice to end tenancy for cause, and to recover the filing fee from the landlord.

The parties attended the hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. 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.

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 unpaid rent?
- Should the notice to end tenancy for unpaid rent or utilities be cancelled?
- Should the notice to end tenancy for cause be cancelled?

Background and Evidence

The landlord testified that this fixed term tenancy began on August 16, 2014 and expires on August 14, 2015. The tenant still lives in the rental unit. Rent in the amount of \$1,350.00 per month is payable in advance on the 1st day of each month. On August 11, 2014 the landlord collected a security deposit from the tenant in the amount of

\$675.00 which is still held in trust by the landlord. The tenant is currently in arrears of rent the sum of \$1,350.00 for January, 2015.

The landlord further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on December 8, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated December 8, 2014 and contains an effective date of vacancy of January 8, 2015. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk;
- 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; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant paid rent late on November 5 and was short \$100.00. The \$100.00 was paid on November 8, 2014. The tenant was also late with rent in December, 2014 and January's rent has not been paid.

With respect to significantly interfering or unreasonably disturbing another occupant or the landlord, the landlord testified that the police have called the landlord asking questions about the tenant. Also, the strata manager has been writing the landlord emails stating that other owners are complaining about the tenant. The tenant was entering other storage units, leaving garbage in the parking garage, and on one occasion the tenant told the landlord that someone was stalking the tenant. The caretaker claims that the "stalker" lives in the rental unit with the tenant. When the landlord attended the rental unit, he answered the door.

The landlord further testified that the tenant was required to sign a "Form K" in order to be compliant with strata by-laws. The tenant didn't sign it, despite several requests from the landlord, and the landlord was fined \$200.00 by the strata for not completing and submitting the form. The form is used by the strata for emergency purposes to know who is in each unit and what their phone numbers are. The landlord did her part and added the tenant's name to the form but the tenant doesn't have a phone so the landlord could not complete it. The caretaker gave the tenant the form to finish completing and sign but she didn't do so.

With respect to putting the landlord's property at significant risk, the landlord testified that the tenant changed the locks to the rental unit without the landlord's knowledge or consent, and a pipe burst in the rental unit flooding it and adjoining units. The flooding happened in October or November, 2014. The caretaker called the landlord because water had gone into other units, and the landlord discovered then that the locks had been changed and the landlord couldn't get in.

With respect to illegal activity, the landlord testified that there are too many different people around and the police have been asking all kinds of questions, including who the tenant lives with. The tenant is supposed to be living alone in the rental unit and other residents are complaining.

With respect to breaching a material term of the tenancy agreement, the landlord testified that is in relation to the changed lock.

The landlord was at the rental unit on January 8, 2015 and the tenant served the landlord with the hearing package disputing the 1 Month Notice to End Tenancy for Cause. The landlord returned later that day to serve the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which contained an expected date of vacancy of January 18, 2015. The tenant was not at home so the landlord posted the notice to the door of the rental unit and made another copy of the notice for the landlord's records. The landlord does not have a photocopier and when making the copy, the landlord put an effective date of vacancy of January 22, 2015. The landlord and the tenant have both provided copies of the notices, and both say that the tenant failed to pay rent in the amount of \$1,350.00 that was due on January 1, 2015.

The tenant testified that rent has only been late in November and December, 2014.

The tenant further testified that she gave the signed Form K to the landlord in December, 2014 when rent was paid. The landlord wouldn't take it. A friend of the tenant works for a law firm and said he would pay the rent for the tenant and give the landlord the Form K but the landlord refused it saying rudely that she wanted the tenant gone. The tenant asked the landlord if she could stay until the 15th of January but the landlord said no and didn't ask for rent. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was received on the door on January 9, 2015.

The tenant has never heard anything about a strata fine and never received any notice of it.

The tenant changed the locks to the rental unit because the lock had been picked once, but the tenant didn't have proof so police weren't called, nor were the landlord or strata

council advised. The locks were changed at the end of November or something, and the landlord was given a key on December 7 or 8, 2014. The tenant didn't think it was a big deal.

With respect to the storage locker, the tenant testified that the tenant's mother was trying to find the tenant's storage locker. There are no signs in the area and she may have tried another locker.

Further, the garbage left in the parking garage belonged to the tenant's neighbour who had repaired a vehicle and left the box from a new muffler half on the tenant's parking spot. The caretaker warned the tenant about it and the tenant threw it away.

Analysis

Where a tenant disputes a landlord's notice to end a tenancy, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed both notices and find they are both in the approved form and contain information required by the *Act*.

Firstly, with respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant testified that the landlord refused the rent and told the tenant's friend that the landlord wanted the tenant to move out. The landlord denies that, however I also find that both parties had an opportunity to deal with the unpaid rent and both chose not to, and the fact remains that rent remains unpaid. The landlord was at the rental unit on January 8, 2015 and the tenant served the landlord with the tenant's application for dispute resolution but did not give the landlord the rent. Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent.

With respect to the unpaid rent, the tenant does not dispute that January's rent has not been paid, and therefore, I find that the landlord has established a monetary claim in the amount of \$1,350.00.

With respect to the 1 Month Notice to End Tenancy for Unpaid Rent or Utilities, I am not convinced that the landlord has established the reasons set out in the notice, considering the testimony of the parties. The landlord has provided no evidence of a strata fine, of any other occupants being disturbed, no warnings from the strata corporation, and no evidence of illegal activity. However, I am satisfied that the tenant breached a material term of the tenancy agreement by changing the locks to the rental unit, which has also put the landlord's property at risk even though the tenant has provided the landlord with the keys. The landlord's obligation was to provide the tenant

a reasonable time to correct the issue, which the tenant did. Therefore, that reason for issuing the notice cannot succeed.

The parties both agree that the tenant was late with rent in November and December, 2014, and having found that the tenant failed to pay rent when it was due in January, 2015, I find that the tenant is considered to be repeatedly late with rent. The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is hereby dismissed and I grant the landlord an Order of Possession. Since the tenancy agreement provides that rent is payable on the 1st day of each month, the effective date of vacancy cannot be sooner than January 31, 2015.

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

Conclusion

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

I hereby grant an Order of Possession in favour of the landlord effective January 31, 2015 at 1:00 p.m.

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 \$1,400.00.

This order is 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: January 29, 2015

Residential Tenancy Branch

