



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC
 MT, CNC, OLC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant, having been adjourned from an earlier date to provide the parties more time to exchange evidence. An Interim Decision was made.

The landlord has applied for an Order of Possession for cause. The tenant has applied for more time to dispute a notice ending the tenancy; for an order cancelling a notice to end tenancy for cause; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The parties both appeared, gave affirmed testimony and provided evidentiary material to the Residential Tenancy Branch and to each other within the time required by my order made in the Interim Decision, however a package of evidence provided by the landlord was received by the tenant but not by me. The landlord advised that the material was sent by facsimile on May 25, 2015 to the Residential Tenancy Branch, and the parties were advised that no Decision would be made until I received that evidentiary material, which has now been received, and shows that it was received by the Residential Tenancy Branch on May 25, 2015..

The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No further 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?
- Should the tenant be permitted more time than prescribed to dispute the notice to end the tenancy given by the landlord?
- Should the notice to end the tenancy be cancelled?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 15, 2014 and expires on September 15, 2015 thereafter reverting to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$2,300.00 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 \$1,150.00 as well as a pet damage deposit in the amount of \$1,150.00, both of which are still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on March 23, 2015 by registered mail, a copy of which has been provided. The notice is dated March 23, 2015 and contains an expected date of vacancy of April 30, 2015. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The landlord has also provided a copy of a Canada Post cash register receipt bearing the date of March 23, 2015 and a copy of both sides of the Registered Domestic Customer Receipt addressed to the tenant as proof of service of the notice.

The landlord testified that the tenant's rent cheque for October, 2014 was dishonoured by the tenant's bank. The tenant paid \$2,000.00 on October 9 and the other \$300.00 on October 10, 2014. The rent for November, 2014 was also late; the landlord again received \$2,000.00 by email transfer on November 7, 2014 and the tenant paid the remaining \$300.00 in cash on his way home from work the same day. March's rent was also late; the landlord's mother found an envelope under the door mat of her residence

on March 2, 2015 which contained cheques for March to August, 2014 in the amount of \$2,300.00 each. The landlord resides in her mother's basement suite. April's rent cheque bounced, and the tenant again paid in 2 installments, being \$2,000.00 on April 5 and \$300.00 on April 6, 2015.

With respect to the other reason for issuing the notice, the landlord testified that the tenant has advertised to rent a portion of the rental unit and has put false information in the advertisements. The advertisement said that it was a private suite, fully furnished and dogs would be allowed, none of which are true. The tenant has had a number of roommates in the rental unit during the tenancy without notifying the landlord in advance and the landlord is now involved in their disputes with the tenant.

The parties had a conversation after the notice was issued, wherein the landlord discussed the financial strain and the dishonesty of the tenant, and said she would think about letting the tenant stay till the end of the fixed term. The tenant found another roommate toward the end of April and the landlord agreed to meet with her even though the landlord had not agreed to withdraw the notice. During that meeting, the landlord learned that the tenant had advised the prospective roommate that the lease was expiring on September 15, 2015 but the landlord would sign another year lease after that. The landlord advised that was not the case, and at best would be a month-to-month tenancy once the term expired. The person did not move in wanting a longer term fixed tenancy.

The landlord seeks an Order of Possession for repeated late rent and for the tenant knowingly giving false information to prospective tenants.

The tenant testified that he works in another municipality 4 or 5 days in a row, and other tenants get the mail from the Post Office box. The tenant doesn't go there often because most bills are received electronically, and the other tenants didn't tell him that they lost the mailbox key. The tenant finally received an email from the landlord's agent that a notice to end tenancy was in the mail, and the tenant received it on April 7, 2015. The tenant then sent an email to the landlord confirming receipt and stating that he wanted to resolve things. The landlord wrote back saying that she didn't see a solution so the tenant filed the application for dispute resolution disputing the notice on April 9, 2015. The tenant requests more time to dispute the notice.

The tenant further testified that he opened a new bank account in July, 2014 before moving into the rental unit and wasn't aware of limitations on the account, partially because the tenant hadn't provided a Social Insurance Number. That created a limit of \$2,000.00 per day transactions on the bank account, but the tenant wasn't aware of that. When the tenant became aware of the returned item for October's rent he called

the bank who told the tenant that no cheques had gone through or been returned from the account. The same problem happened in November, 2014. Copies of bank statements have been provided.

On January 1, 2015 the tenant was leaving town and dropped off 2 rent cheques for January and February under the door mat of the landlord's residence. The tenant went back the next day and dropped off more cheques for March to September, 2015. The tenant emailed the landlord with those intentions and never heard back so assumed they were received.

With respect to the information in the advertisements, the tenant testified that there was a typing error and he changed it. It wasn't advertised as fully furnished, the tenant meant finished, or insulated. Everything else was exactly as laid out, and the issue of dogs could be discussed. Obviously that process would include the landlord's input.

From October 29, 2014 to April 20, 2015 the parties never had a conversation, only emails. The tenant was never given the option to talk or resolve anything, and the landlord didn't agree to anything. The tenant informed the landlord by email on April 23, 2015 that the tenants in the rental unit (roommates) were likely to move out at the end of April and neighbours might move in. The landlord told them that she would agree to the end of September and then on a month-to-month, and that was too unstable for them so they didn't rent.

Analysis

I have reviewed the evidentiary material and I am satisfied that the landlord served the tenant with the 1 Month Notice to End Tenancy for Cause on March 23, 2015 by registered mail. Documents served in that manner are deemed to have been served 5 days later, and in this case, I find that it was deemed to have been served on March 28, 2015. However, the tenant states that he didn't receive it until April 7, 2015 because his roommates didn't tell him they lost the mail key and the tenant learned that it was in the mail upon receiving an email from the landlord's agent. The *Act* provides a tenant with 10 days to dispute such a notice, and I accept the testimony of the tenant that he received it and filed the application for dispute resolution 2 days later. The tenant testified that he contacted the landlord, and I accept that since the tenant acted on it within 2 days of receiving it, the tenant ought to be granted more time to dispute it, and I so order.

Where a tenant disputes a notice to end a tenancy given by the landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find

that it is in the approved form and contains information required by the *Act*. With respect to the reasons for issuing it, the tenant does not dispute that rent was late on the occasions set out by the landlord, and has provided a copy of his bank statement showing that no cheques went through or were returned for insufficient funds or any other reasons for the months of October and November, 2014. He also testified that the bank, unknown to the tenant placed a \$2,000.00 per day transaction limit, but has provided no evidence of that and 2 cheques dated the same day on that account, which total more than \$2,000.00 appear to have been honoured. The tenant also stated that he left rent cheques for March through September, 2015 under the landlord's door mat and provided a copy of an email to the landlord stating that he intended to do that, and did not know the landlord hadn't received them. I don't accept that either. The landlord testified, and has provided evidence that each time the tenant left money under the mat, the landlord sent an email to the tenant to confirm they had been received, and no such email has been provided in the strings provided by either party. The tenant was again late for rent in April, 2015.

The tenant suggested in closing submissions that the *Act* provides for late rent payments to not be considered repeatedly late if there are long periods in between the late payments. In this case, the tenancy has only been in place for about 8 months and the tenant was late with rent on 4 occasions.

I find that the landlord had cause to issue the notice, and it is not necessary to deal with the other reason for issuing the notice.

The tenant's application to cancel the notice is hereby dismissed. Since the effective date of vacancy contained in the notice has passed, I grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

Since the tenancy is ending, I also dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

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, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further 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.

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: May 28, 2015

Residential Tenancy Branch

