



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, 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 damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and the tenant was accompanied by a legal advocate. The parties each gave affirmed testimony and 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 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?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

Background and Evidence

The landlord testified that this fixed-term tenancy began sometime in 2014 and reverted to a month-to-month tenancy after the first year. The tenant still resides in the rental unit. Rent in the amount of \$975.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$487.50 which is still held in trust by the landlord, and no pet damage deposit was collected. A tenancy agreement had been signed by the parties, but a copy was not provided for this hearing.

The landlord further testified that the tenant is currently in arrears the sum of \$475.00 for April's rent. The landlord received \$375.00 from Income Assistance but the balance has not been covered by the tenant.

On May 31, 2015 the landlord served the tenant personally with a 1 Month Notice to End Tenancy for Cause. A copy of the notice has been provided and it is dated May 31, 2015 and contains an effective date of vacancy of June 30, 2015. The reasons for issuing it are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has not done required repairs of damage to the unit/site.

With respect to the first reason, the landlord testified that rent was paid late 6 months from January, 2015 to August, 2015. January's rent was paid on the 28th of the month; February's rent was paid in 3 installments of \$375.00 on the 1st, \$360.00 on the 18th and \$300.00 on the 19th, leaving a \$60.00 surplus. March's rent was paid on the 27^h, and the tenant still owes \$475.00 for April.

With respect to the second reason for issuing the notice, the landlord testified that someone known by the tenant, in the general area of the tenant's rental unit, threw a rock through the window and sprayed bear spray into the lower level suite. The tenant lives in the upper level suite. The landlord does not know which unit it was meant for, but there have been disturbances from the tenant's rental unit where police have been involved. The tenant had initially told the landlord that she would look after the damage, but changed her mind stating that it wasn't her responsibility. The landlord stated that the offer to pay for it initially was taken as admittance by the tenant but the landlord has no precise information about it. The cost for repair was \$311.60. A copy of the invoice and proof of payment have been provided.

The landlord further testified that a lawn contractor was hired to cut the lawn at the rental property and was told to get off the property and that the grass didn't need to be cut. The contractor left the property and the landlord had to hire another, but in the meantime, the grass had grown a couple feet high so a weed eater had to be used which raised the cost from \$55.00 to \$420.00. A copy of the invoice has been provided.

The landlord further testified that disturbances from the rental unit have affected other tenants, such as someone calling neighbours asking to use the phone. There are 4 units in the rental complex, but one family uses 2 units, so there are 3 rentals. Police have been called on April 11, 2015, June 3, 2015 and again on June 16, 2015 due to fighting, screaming and loud noises coming from the tenant's unit. Garbage containers haven't been taken to the roadway so the landlord has had to take them to the landfill and pay a fee each time.

The landlord was successful in obtaining an Order of Possession at arbitration a year ago, but didn't serve it on the tenant or pursue it, telling the tenant to pay rent on time and go forward, however, things haven't changed. The landlord has not been served with an application for dispute resolution by the tenant disputing the notice and the landlord seeks an Order of Possession and is content with an effective date of August 31, 2015. The landlord also seeks a

monetary order for \$311.60 for the broken window, \$420.00 for the lawn care, and \$50.00 for recovery of the filing fee.

The tenant testified that she didn't dispute the notice to end the tenancy. It was given to her son who is 22 years old, and he did provide it to her. The tenant believed that showing up for this hearing was sufficient to dispute it.

The tenant also testified that when she moved in she paid the landlord a security deposit and then her brother moved in and the tenant paid the landlord another security deposit.

On June 26, 2015 Social Services advised the tenant that the landlord returned rent cheques stating that the tenant didn't live there. The tenant also testified that rent was paid on February 27, 2015. Social Services always pays a portion ahead of time.

Analysis

The *Residential Tenancy Act* states that where a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute the notice by making an application for dispute resolution. If the tenant fails to do so the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit. In this case, I have reviewed the notice and I find that it is in the approved form and requires information required by the *Act*. The landlord testified that it was served on May 31, 2015 and the tenant agrees that it was received. The tenant has not disputed the notice, and I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. The landlord is content with an Order of Possession effective August 31, 2015, and I so order.

With respect to the landlord's application for a monetary order for damages, in order to be successful, the onus is on the landlord to establish the 4 part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce the amount of damage or loss suffered.

In this case, the landlord has provided evidence of the cost of the repair to the window and the cost of lawn care, and I am satisfied that elements 1 and 3 have been established. However, the landlord has no precise information about how the window was broken or who did it. Further, there is no evidence before me to satisfy me that the person who chased away the first lawn care contractor was the tenant or a person permitted on the property by the tenant. As a

result, I find that the landlord has failed to establish element 2 in the test for damages, and the landlord's application for monetary compensation for damage to the unit, site or property is dismissed.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee, and I order the landlord to keep that amount from the security deposit(s) currently held in trust, and order the parties to comply with the *Residential Tenancy Act* with respect to the balance of any monies held in trust by the landlord as a deposit or deposits.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective August 31, 2015 at 1:00 p.m. and the tenancy will end at that time.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed.

I hereby order the landlord to keep \$50.00 of the security deposit 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 20, 2015

Residential Tenancy Branch

