



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mok's Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF, CNC, MNDC, O

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord's agent attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord's agent stated that he served the tenant with the landlord's notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on July 29, 2015. The landlord has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation of service. An Online search of the Canada Post Website shows that the tenant received and signed for the package on July 30, 2015. On the basis of this evidence and pursuant to section 88 and 89 of the *Act*, I am satisfied that the tenant was deemed served with the notice of hearing package and the submitted evidence on August 3, 2015, the fifth day after its registered mailing.

The landlord confirmed receipt of the tenant's notice of hearing package. The landlord also confirmed that no documentary evidence was received from the tenant. The tenant failed to

attend to put forth his application and the landlord was present to respond to the tenant's application. At the end of the hearing after waiting 39 minutes past the start of the scheduled hearing, the tenant's application was dismissed without leave to reapply. The hearing was conducted dealing with the landlord's application only.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the filing fee for his application from the tenant?

Background and Evidence

This tenancy began on January 1, 2008 on a one year fixed term tenancy ending on December 31, 2008. The tenancy continued on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 24, 2007. The monthly rent is \$850.00, payable in advance on the 1st of each month. A security deposit of \$425.00 was paid on December 24, 2007.

On June 29, 2015, the landlord's agent A.C. served the tenant with the 1 Month Notice dated June 29, 2015 by posting it to the rental unit door. The landlord's agent, A.C. has submitted a copy of a proof of service document which states that another of the landlord's agents, D.C. witnessed, A.C. post the 1 Month Notice on the rental unit door on June 29, 2015. The 1 Month Notice set out that it was being given as:

- the tenant is repeatedly late paying rent; and
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlord's agent, A.C. clarified that the tenant was repeatedly late paying rent and that the tenant had a dog for which there is a no pet provision in the tenancy agreement. The landlord's agent also stated that the tenant's dog has threatened the safety of other tenants.

The landlord has provided details of repeatedly late rent payments in the form of rental arrears letters given to the tenant. The first letter is dated May 19, 2011 which shows that the tenant was late paying rent February and May of 2011. The second letter is dated November 25, 2013 which shows that the tenant was late paying rent July 2013, October 2013 and November 2013. The third and final letter is dated June 2, 2015 which shows that the tenant was late paying rent in February 2015 and March 2015.

The landlord has provided details of the second reason for cause in which the tenant has a dog which is a direct contravention of the no pets clause, which reads,

3) PETS: No animals or birds shall be kept or harboured on the premises.

The landlord's agent, A.C. discovered that the tenant got his first dog in 2011 and has cautioned the tenant each year since that this is a reason to end the tenancy. The landlord's agent has also stated that he has received complaint letters from April 2011 to October 2012. The landlord's agent confirmed in his direct testimony that no written breach letters or a 1 Month Notice to End Tenancy were ever issued to the tenant. The landlord's agent stated that the tenant obtained a second dog thereafter. The landlord's agent also relies on a letter dated April 29, 2015, which the landlord lists 5 items of contention to the tenant. The fifth item being, "No dog is allowed".

The landlord's agent also refers to a complaint letter from another tenant who stated that the tenant's dog has threatened her and that she is afraid for her safety. The letter is undated by the tenant, Y.W. and states,

The neighbor from #...has a dog that he takes in and out of his apartment and walks with the dog without a leash on the hallway and stairwell...I am afraid of his dog and dogs in general too and he could be taking his dog in and out at any time...

The landlord's agent also stated that the tenant has refused access to the landlord's agents for bedbug treatments in the building, but provided no details or evidence to support this portion of his claim.

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's cross claim and my findings around each are set out below.

I accept the undisputed affirmed testimony of the landlord's agent that the tenant was served with the 1 Month Notice dated June 29, 2015 by posting it to the rental unit door on June 29, 2015 as shown by the submitted copy of the proof of service statement dated June 29, 2015.

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Section 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38 states,

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, **if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.**

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

The landlord provided details of repeatedly late rent payments twice in February and May of 2011, July, October and November of 2013 and then February and March of 2015. As the landlord has issued the 1 Month Notice dated June 29, 2015, I find that the landlord has waived his reliance on this provision of ending a tenancy for repeatedly late rent payments. The landlord's agent has continued to issue 10 day Notice(s) to end tenancy for unpaid rent repeatedly since 2011, but has not acted on these notices. The landlord's agent has also failed to give notice to the tenant that this behavior (late rent payments) is no longer going to be acceptable. The only recent late rent payments are for February and March of 2015 which fall short of the minimum standard of three late payments to justify a notice. I find that the landlord has failed to provide sufficient evidence to justify the reason for cause of repeatedly late rent payments. This portion of the landlord's application is dismissed.

Section 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord has provided details that the tenant is in possession of a dog which is a direct contravention of the section 3 of the signed tenancy agreement which states,

3) PETS: No animals or birds shall be kept or harboured on the premises.

The landlord's agent has confirmed in his undisputed affirmed testimony that he has been aware of the tenant having a dog since 2011 for which he has repeatedly given verbal warnings that the tenant was not allowed to have a dog. The landlord's agent has also stated that prior to the 1 Month Notice issued June 29, 2015 that no breach letters have been issued to the tenant.

I find that the landlord's agent has failed to provide sufficient evidence to satisfy me that another tenant/occupant was threatened by the tenant's dog. The tenant, Y.W. has not provided in her written statement any details of any incidents where she was threatened. Instead the letter states that this person is afraid of dogs in general. This portion of the landlord's application is dismissed.

I find that the landlord has failed to provide sufficient evidence to satisfy me that the tenant has breached a condition of the rental agreement. The landlord has not given proper notice to the tenant of a breach of a term of the tenancy agreement in written form. The landlord has also failed to give notice to the tenant that after accepting the pet in the rental unit since 2011 that this conduct is no longer acceptable. This portion of the landlord's application is dismissed.

Conclusion

The tenant's application is dismissed without leave to reapply.
The landlord's 1 Month Notice dated June 29, 2015 is set aside and is of no force and effect.
The tenancy continues. The landlord's application is dismissed.

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: September 03, 2015

Residential Tenancy Branch

