



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOBILE & ASSOCIATES PROPERTY MANAGER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession because the tenants have breached an agreement with the landlord and to recover the filing fee from the tenant for the cost of this application.

The tenant, the tenant's husband and an agent for the landlord (the landlord) attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2014 for a fixed term that was due to end on July 31, 2015. Rent for this unit is \$1,350.00 per month due on the

1st of each month in advance. The tenant paid a security deposit of \$675.00 at the start of the tenancy.

The landlord testified that the tenancy agreement provides a clause that states the tenancy is a fixed term that expires on July 31, 2014. At the end of this fixed length of time, the tenancy ends and the tenant must move out of the residential premises, except where a new rental agreement or extension has been made at least one month prior to expiry. A copy of this tenancy agreement has been provided in documentary evidence.

The landlord testified that they spoke in person to the tenant in June, 2015 and made it clear that the tenant had to clean up the property or the lease would not be renewed. When the landlord returned to view the property in July it was still in poor condition and the landlord informed the tenant that the lease would not be renewed and the tenant must vacate the rental unit on July 31, 2015.

The landlord testified that they posted a notice detailing a move out inspection prior to the end of the lease to let the tenant know the landlord would be coming to do the move out condition inspection. On the last day of the tenancy someone dropped off three postdated cheques for rent for August, September and October, 2015. The landlord wrote to the tenant and informed them that the cheques were accepted for occupancy only and do not recognise the tenant as a tenant as they are overholding in the rental unit. The landlord also wrote on the rent ledger that the rent payments accepted from the end of July were for occupancy only.

The landlord testified that a final Notice of inspection was posted to the tenant's door giving the date for the final inspection as August 03, 2015. The tenant was not at home on that date and no inspection was done. The tenant has continued to overhold in the rental unit and the landlord seek an Order of Possession because the tenant has breached an agreement with the landlord that the tenancy must end on July 31, 2015.

The tenant testified that near to the end of the tenancy the landlord said if they cleaned up the house he will renew the lease. The tenants made effort to clean up but the landlord did not renew the lease. The cheques sent to the landlord for August, September and October, 2015 are for the rent. The tenant's husband testified that they are looking for somewhere else to live every day.

The landlord testified that after they had met the tenant and given them the opportunity to clean up the property, when the landlord returned to the property on July 13, 2015 there was no sign that any effort had been made to clean up. Things had been covered with tarpaulins and blankets. The lease was not renewed because of this. The landlord referred to his photographic evidence showing the condition of the property on July 13, 2015.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 44(1)(b) of the *Act* which states:

44 (1) *A tenancy ends only if one or more of the following applies:*

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

I have reviewed the tenancy agreement and find the agreement provides that the tenancy will end on July 31, 2015. The agreement states that the tenancy can only continue past that date if the landlord agrees to renew the lease. In this matter the landlord decided not to renew the lease.

The landlord accepted rent for the following three months for occupancy only and the tenants were informed that they were overholding at the rental unit and the rent accepted was for occupancy. It is therefore my decision that the landlord has established that the tenancy ended on July 31, 2015 and the tenant is overholding at

the rental unit. Therefore, I find the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **October 31, 2015**. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$675.00 leaving a balance \$625.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: October 21, 2015

Residential Tenancy Branch

