



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession for unpaid rent and to recover the filing fee from the tenants for the cost of the application.

Both landlords and one of the named tenants attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other with respect to 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

Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession?

Background and Evidence

The first landlord (MPK) testified that this month-to-month tenancy began on October 10, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$900.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$450.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family dwelling house, and a copy of the tenancy agreement has been provided.

The landlord further testified that the tenants have been repeatedly late paying rent, and rather than paying on the 1st day of each month, the tenants paid on the following dates: January 2, February 6, March 10, June 3, July 3, August 5, September 2, November 6,

and December 4 of 2015 as well as January 7, February 2, and March 11, 2016 and no rent has yet been paid for April, 2016.

The landlords served the tenants with a number of notices to end the tenancy, the first being a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated February 26, 2016 and contains an effective date of vacancy of March 31, 2016. One of the tenants was served personally with the notice on February 26, 2016. The reason for issuing it is: Tenant is repeatedly late paying rent. After serving the notice, the tenant served the landlords with a Tenant's Application for Dispute Resolution, but the form was incomplete and was not accompanied by a notice of a dispute resolution hearing. The landlord orally provided a file number assigned to the tenants' application.

The landlords also served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 7, 2016 by personally handing it to one of the tenants. A copy has been provided and it is dated March 7, 2016 and contains an effective date of vacancy of March 16, 2016 for \$900.00 of unpaid rent that was due on March 1, 2016. The tenants paid the rent on March 11, 2016.

On March 28, 2016 the landlords served the tenants by handing directly to one of the tenants a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. The notice is dated March 28, 2016 and contains an effective date of vacancy of June 1, 2016. The reason for issuing it is: "All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The rental unit has been sold and the possession date is June 1, 2016.

The landlord also testified that the tenants were served on April 4, 2016 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The second landlord (FJK) testified that the property is now sold but the landlords need assurance that the tenants will move out. New owners take possession on June 1, 2016 and would like to move in sooner if possible. Further, the landlords have some work to do on the property before the possession date.

The tenant testified that at the beginning of the tenancy the landlords made it clear that they wanted payment for rent in cash only, not by cheque. Sometimes that was difficult to do on the first day of each month, but the landlords never gave a notice to end the tenancy for unpaid rent.

Prior to being served with the 1 Month Notice to End Tenancy for Cause, one of the landlords told the tenant's wife that the new owner didn't want to wait for 2 months to take possession, and it wasn't until the tenants were served with the notices that it made sense that the landlords didn't want to serve the 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants disputed the 1 Month Notice to End Tenancy for Cause and assumed this hearing would deal with the tenants' dispute. It threw them into a tail-spin and was very stressful. There was not enough time to find another home, and the tenants didn't understand their rights under the *Residential Tenancy Act*.

The tenants were served with the 1 Month Notice, then the 2 Month Notice, which they do not believe was coincidental. Late rent was never an issue prior, nor were the tenants served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities until after the landlord served the 1 Month Notice.

The tenants always accommodated realtors during the time that the rental unit was for sale.

Analysis

I have reviewed the evidentiary material, and I agree with the tenant that the landlords did not serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities prior to issuing the 1 Month Notice to End Tenancy for Cause. However, the application before me is for an Order of Possession for unpaid rent. The landlord testified that the notice was served on March 7, 2016 and the tenants paid the rent in full on March 11, 2016. The *Act* states that where a tenant pays the rent within 5 days of receiving the notice, the notice is of no effect. Therefore, I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 7, 2016 is of no effect.

The Landlord's Application for Dispute Resolution specifies an application for an Order of Possession because the tenant has not paid rent or utilities, beside which someone has written, "repeated late rent." The landlords served the tenants with a 1 Month Notice to End Tenancy for Cause on February 26, 2016 for repeated late rent. The application of the landlords also specifies that the date the notice was served was February 26, 2016 and therefore, I am satisfied that the landlords filed the application for dispute resolution based on repeated late rent and based on the 1 Month Notice to End Tenancy for Cause, not on the 10 Day Notice.

The *Residential Tenancy Act* states that once a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute the notice, and 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 by the effective date contained in the

notice. In this case, I am satisfied that the tenants disputed the notice. During the course of the hearing I explained the principles of *res judicata* which prevents me from making any findings of fact or law that have already been adjudicated upon, and as a result, I would review the tenants' application. The case management system shows that the tenants' application was abandoned, and therefore, I find that it is treated as not disputed. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an Order of Possession.

Since the effective date of vacancy has passed, I grant the order on 2 days notice to the tenants.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlords in that amount.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

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: April 21, 2016

Residential Tenancy Branch