



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
and [enant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession of the rental unit.

An agent and 3 witnesses for the landlord attended the hearing, however the line remained open while the phone system was monitored for in excess of 15 minutes prior to hearing any testimony and no one for the tenant attended the call. One of the landlord's witnesses testified under affirmation that the tenant was served with the hearing package which contained the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on May 19, 2016. A tracking number assigned by Canada Post was orally provided, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The agent for the landlord also gave affirmed testimony, and evidentiary material was provided by the landlord prior to the commencement of the hearing, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 11, 2004. Rent in the amount of \$375.00 per month is payable on the 1st day of each month. The rental unit is a self-contained suite in a social housing complex containing 63 units, and no security deposit or pet damage deposits were collected by the landlord.

The tenant was taken to a Residential Care Facility on August 17, 2015 and is now a permanent resident of that care society. When the tenant originally went there, it wasn't

clear whether or not she would have to stay there or if she would be able to return to the rental unit. The tenant has continued to pay rent and the tenant's items have remained in the rental unit, however the landlord has also provided a letter from the Residential Care Facility dated May 4, 2016 confirming that the tenant has been a permanent resident of the Residential Care Facility. The letter also states that the facility provides 24 hour professional care to residents who have complex medical and care needs. The letter also states that based on the tenant's medical and care needs, the tenant will not be able to return to independent living at the rental unit.

On March 29, 2016 the tenant and the tenant's social worker were personally given a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. The notice is dated March 26, 2016 and contains an effective date of vacancy of April 30, 2016. No boxes are checked on page 2 of the notice, so no reason is given for ending the tenancy. The landlord's agent testified that the reason the notice was issued is because the tenant no longer resides in the rental unit and will not be able to return.

The landlord's witness testified that the landlord's agents approached the tenant in the presence of the tenant's support social worker, and the landlord's witness attended at the tenant's bedside in an effort to obtain a mutual agreement to end the tenancy, but the tenant is frail and did not understand or want to discuss it. The tenant is not cognitive and is in a skilled nursing and palliative care facility. The landlord issued the notice to end the tenancy to move forward in a compassionate way. The landlord seeks an Order of Possession based on the tenant's inability to occupy the rental unit and to offer the rental unit to other occupants who require such support in a supportive housing residence in such high demand.

The tenant has not served the landlord with an application for dispute resolution disputing the notice.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant must dispute it within 10 days by filing an application for dispute resolution and serving the landlord. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the tenant has not disputed the notice, and the landlord testified that the tenant and the tenant's support social worker were served with the notice on March 29, 2016. I accept that testimony, and given the evidentiary material, particularly the letter from the residential care facility, it is clear that the tenant will not be returning to the rental unit. The tenant has not served the landlord with an application for dispute

resolution disputing the notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled under the *Act* to an Order of Possession.

Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

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

Conclusion

For the reasons set out above, 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 Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is 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: June 15, 2016

Residential Tenancy Branch