



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNSD, OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated July 17, 2016 pursuant to section 47;
- cancellation of the landlord's 1 Month Notice dated August 22, 2016 pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement pursuant to section 62.

Tenant ML and tenant SL (collectively the "tenants") and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord confirmed receipt of the tenants' application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

Issue(s) to be Decided

Should the landlord's 1 Month Notice dated July 17, 2016 be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord's 1 Month Notice dated July 22, 2016 be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants authorized to obtain a return of all or a portion of the security deposit?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2016 on a month-to-month basis. Rent in the amount of \$1,000.00 is payable each month. The tenants remitted a security deposit in the amount of \$500.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The tenants confirmed receipt of the 1 Month Notice, dated July 17, 2016, posted to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 1 Month Notice on July 20, 2016, three days after its posting. The grounds to end the tenancy cited in the 1 Month Notice were that the tenants were repeatedly late paying rent.

The landlord testified to four instances in which the tenants did not pay rent by the first of the month. The tenants' confirmed these late payments but contended that the landlord was agreeable to these late payments as long as a late fee was paid each month.

The tenants confirmed receipt of another 1 Month Notice, dated July 22, 2016, posted to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's second 1 Month Notice on July 25, 2016, three days after its posting. The grounds to end the tenancy cited in this 1 Month Notice were that the tenants had engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenants are repeatedly late paying rent. The onus is on the landlord to prove the tenants were repeatedly late paying rent. Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*. Based on the tenants' own admission that rent was repeatedly paid past the date indicated in the tenancy agreement, I find the landlord has met the onus and dismiss the tenants' application to cancel the 1 Month Notice dated July 17, 2016.

Section 55 of the *Act* establishes that if tenants make an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenants' application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice dated July 17, 2016 complies in form and content. As the tenants' application has been dismissed I find that the landlord is entitled to an order of possession effective August 31, at 1:00 p.m.

As a finding has been made in relation to the 1 Month Notice dated July 17, 2016, and the tenancy is set to end, a finding on the 1 Month Notice dated July 22, 2016 is not required. This portion of the tenants claim is dismissed without leave to reapply.

Further as the tenancy is set to end, the tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit and an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement are also dismissed without leave to reapply.

The tenants' application to the return of their security deposit is premature as they have not vacated the rental unit. For this reason, this portion of the tenants' application is dismissed with leave to reapply.

Conclusion

I grant an order of possession to the landlord effective August 31, 2016 at 1:00 p.m.

The tenants' application to dismiss the landlord's 1 Month Notice dated July 22, 2016 is dismissed without leave to reapply.

The tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit is dismissed without leave to reapply

The tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

The tenants' application to obtain a return of all or a portion of the security deposit is dismissed with leave to reapply.

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 25, 2016

Residential Tenancy Branch