



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF
 MT, CNC, CNR, AAT, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and for monetary compensation from the tenant for recovery of the filing fee. The tenant has applied for more time to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for cause; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order that the landlord allow access to (or from) the unit or site for the tenant or the tenant's guests; and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other respecting the testimony and evidence provided.

During the course of the hearing, the landlord testified that she received evidence from the tenant on August 4, 2016 and responded by filing additional evidence on August 8, 2016, providing a copy to the tenant personally that day. No issues were raised by either party with respect to late evidence provided by either party, and all evidence has been reviewed and is considered in this Decision.

Also, during the course of the hearing, it was determined that the tenant does not require more time than prescribed to dispute the notice to end the tenancy. The notice was served on June 23, 2016 and the tenant's application for dispute resolution was filed on June 29, 2016. The *Act* provides for 10 days from service to dispute the notice, and I dismiss that portion of the tenant's application.

Further, the tenant has not been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the tenant's application to cancel a notice to end the tenancy for unpaid rent or utilities is dismissed.

With respect to the tenant's application for an order that the landlord allow access to or from the rental unit for the tenant or the tenant's guests, the tenant testified that his

intention is to seek an order cancelling a notice to end the tenancy which would allow access to the rental unit, and that the landlord has not denied access. That application is specific to cases where a landlord denies or restricts access, and therefore, that application is dismissed.

The tenant also specified that the “Other” portion of the tenant’s application refers to a claim for moving expenses if the tenant is required to move out of the rental unit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Should the tenant recover moving expenses from the landlord if the notice to end the tenancy is upheld?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$1,350.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$675.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided.

The landlord further testified that on June 23, 2016 the landlord attended the rental unit with her boyfriend and served a 1 Month Notice to End Tenancy for Cause by personally handing it to an adult living in the rental unit. The landlord testified that she is aware that the tenant has been renting a room without the landlord’s consent.

A copy of the 1 Month Notice to End Tenancy for Cause has been provided and it is dated June 23, 2016 and contains an effective date of vacancy of July 31, 2016. The reasons for issuing it are:

- Tenant is repeatedly late paying rent;
- Tenant has not done required repairs of damage to the unit/site, beside which is written in hand-writing, “ 2 broken light fixtures have not been replaced since March 2016 inspection.”

Also written on the second page of the notice is: "late rent December, 2015, February, 2016, May, 2016."

The landlord further testified that on December 2, 2015 she sent an email to the tenant about unpaid rent and the tenant paid it on December 4, 2015. In February the tenant paid rent on the 2nd of the month partially in cash and partially by e-transfer. In May, 2016 the tenant paid on May 2.

The landlord also testified that a light fixture in a basement bedroom and another in the front of laundry appliances are broken. In March, 2016 the landlord conducted an inspection and the tenant said the bedroom light fixture was broken by the tenant's child throwing a ball, but didn't say how the other one was broken. The tenant said he would repair them, and the landlord followed up with an email on March 27 asking to have them repaired by early June, 2016. On June 22, 2016 the landlord attended for another inspection and the repairs had not been done. Photographs have been provided, which the landlord testified were taken during that inspection. The tenant's evidentiary material includes a statement from the tenant dated August 3, 2016 which indicates that the tenant purchased fixtures and he will install them while he's on vacation, but the tenant has not provided any evidence to the landlord that he has in fact purchased any. The landlord asked to see them, but the tenant said he didn't have time to show them to the landlord and closed the door in the landlord's face.

The landlord also submits that a landlord doesn't have to give a tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, nor does a landlord have to remind a tenant when rent is due.

The landlord seeks an Order of Possession and a monetary order for recovery of the filing fee.

The tenant testified that the landlord never mentioned any issues about being a day late with rent and never served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant admits that rent was 1 day late on 2 occasions, but the parties had verbal discussions and no issues were raised with it, and the late payments were completely in error. It was not an issue at the time or until April, 2016 when the landlord notified the tenant that the landlord had purchased a recreational property and needed to sell the rental unit. The landlord told the tenant that he had to move out by June 30 and the tenant would be entitled to a free month of rent. The *Act* requires a landlord to sell the rental unit before giving notice to end the tenancy and it has not sold.

During April and May the parties discussed options, such as the tenant purchasing the rental unit, or that the tenant would vacate, but the tenant was dealing with a custody dispute in Court in June and the tenant could not move. There was no commitment that the tenant would move at any specific time. It was April 12 when the landlord said she was looking to sell, and 17 days later, April 29, the landlord sent an email to the tenant stating that the tenant had to be out by the end of July so the landlord could get the home in tip-top shape for viewing to sell.

On June 23 the tenant met with the landlord and was presented with a Mutual Agreement to End Tenancy. The tenant told the landlord he couldn't sign it because he didn't have another place for his family. The landlord told the tenant that she had cause to evict for repeated late rent, and that's the first time late rent was ever discussed. When the payments were made, all that the landlord said was, "Thank you." It's not a burning issue with the landlord. If the landlord had made an issue, the tenant would never have been late a second time.

With respect to broken light fixtures, the tenant agrees that the parties discussed it, and the tenant has purchased replacements but has not installed them to prevent them from being broken again. Collectively, they cost less than \$50.00, and the tenant purchased 2 assuming the landlord would want matching ones. The tenant does not believe it qualifies as damage. It's not extraordinary damage. The tenant told the landlord he would repair them while on vacation, but has not taken vacation yet, and the landlord seemed okay with that. When the landlord asked to see them, it was not a good time, during an important family meeting, and the landlord insisted on entering. The tenant offered to show them to the landlord the next day, but never heard anything else from the landlord. The tenant has been cooperative, has been taking care of the house, and the landlord inspects monthly. The tenant submits that the landlord did not have cause, but had an ulterior motive for issuing the notice to end the tenancy.

The tenant seeks an order cancelling the 1 Month Notice to End Tenancy for Cause and recovery of the filing fee from the landlord.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice dated June 23, 2016 and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

It is not for me to decide whether or not the landlord had an ulterior motive for issuing the notice, but whether or not the landlord had cause to issue it pursuant to Section 47 of the *Act*.

With respect to repeated late rent, the standard is no less than 3 late payments before a landlord could substantiate repeated late rent. I also refer the Residential Tenancy Policy Guideline #38 - Repeated Late Payment of Rent which states:

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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

In this case, the parties do not dispute that rent is payable on the 1st day of each month, and the tenant paid rent on December 4, 2015; February 2 and May 2, 2016. None of those payments are far apart, and the landlord issued the notice to end the tenancy the month following the latest rent payment. The tenant’s testimony is that he was dealing with a family Court matter and didn’t realize he was late on 2 of those occasions. I am also satisfied that on 2 of the 3 occasions, the tenant paid the rent only one day late, and had the landlord notified him that it was an issue, it wouldn’t have happened again. However, the fact remains that the tenant was on both occasions in breach of the tenancy agreement. I can only consider that the landlord waived reliance on repeated late rent if I find that the landlord failed to act in a timely manner after the last late rent payment, and I cannot make that finding.

Therefore, I find that the landlord has established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*, and there is no requirement to address the second reason for issuing it.

Since the effective date of vacancy contained in the notice has passed, I grant an Order of Possession in favour of the landlord on 2 days notice to the tenant, and I dismiss the tenant’s application.

The tenant also specified that the "Other" portion of the tenant's application refers to a claim for moving expenses if the tenant is required to move out of the rental unit. The *Act* requires a landlord to provide compensation if the landlord serves the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. In this case, the landlord has not served the tenant with such a notice, and I find no other reason in the circumstances to award moving expenses. The tenant's application in that regard is hereby dismissed.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

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 Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee.

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 12, 2016

Residential Tenancy Branch