



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

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

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call. The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing personally at the rental unit on September 17, 2016, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this month-to-month tenancy began in May about 16 years ago and the tenant still resides in the rental unit. Rent in the amount of \$600.00 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 \$300.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resides in the upper level of the home. No written tenancy agreement has been signed by the parties.

The landlord further testified that on August 1, 2016 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided, by giving it to the tenant's adult daughter who also resided in the rental unit at that time. It

is dated July 31, 2016 and contains an effective date of vacancy of September 1, 2016. The reasons for issuing it are:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has significantly
 - jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damages to the unit/site.

The landlord testified that the tenant has not served the landlord with an application for dispute resolution disputing the notice and has not vacated the rental unit.

Analysis

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 it by filing an application for dispute resolution with the Residential Tenancy Branch and serving it on 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, I accept the undisputed testimony of the landlord that the tenant has not served the landlord with an application for dispute resolution, 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.

I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*, with the exception of the date of vacancy. Where rent is payable on the 1st day of the month, the landlord must serve the notice prior to the day rent is payable, and in this case the landlord testified that it was served on August 1, 2016. Therefore, the effective date of vacancy cannot be sooner than September 30, 2016. That date has passed, and I find that the landlord is entitled under the *Act* to an Order of Possession effective 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 hereby 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 Section 67 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: November 09, 2016

Residential Tenancy Branch