



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC MND FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The Notice to End Tenancy is dated January 29, 2017 to be effective February 28, 2017 and the parties confirmed it was served personally on February 5, 2017 and the Application for Dispute Resolution was also served personally. I find the documents were legally served for the purposes of this hearing. The effective date on the Notice is automatically corrected to March 31, 2017 pursuant to section 53 of the Residential Tenancy Act as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for cause pursuant to section 47;
- b) To obtain a monetary order for unpaid rent in the amount of \$700; and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 47 and they are entitled to an Order of Possession and a monetary order for unpaid rent? Is the landlord entitled to recover the filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced December 1, 2016, it is a month to month tenancy, rent is \$700 a month and a security deposit of \$350 was paid.

The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant or a person permitted on the property by them
 - (i) has significantly interfered with and unreasonably disturbed another occupant or the landlord.

The tenant did not file an Application to dispute the Notice but she said she vacated on February 28, 2017. She said the landlord had locked her out after that so she could not retrieve all her belongings. The landlord denied this and said they had to fix a broken door and all she left was some garbage.

The landlord also claims the tenant did not pay rent for February. She provided some emails to show the tenant disputed owing rent. The tenant said that she first thought she was entitled to two months free rent but she called the Residential Tenancy Branch and they advised her that she had to pay her rent. She said she paid it to a big man with a truck who lives in the house. The landlord denies this.

The tenant said she has not provided her forwarding address in writing yet as she is afraid of members of the landlord's household. I advised her of the provisions of section 38 of the Act and that she had to provide an address in writing for the return of her deposit and it could be a relative's address.

Analysis:

Section 47 of the Act provides a landlord may end a tenancy if there is sufficient cause. The causes, any one of which may be a sufficient reason, are listed in that section. I find section 47(4) states a tenant has 10 days to dispute the Notice to End Tenancy. If they do not file an application to dispute within this time, I find section 47(5) provides they are conclusively presumed to have accepted the end of the tenancy on the date set out on the notice and must vacate the rental unit by that date. I find the tenant vacated on February 28, 2017 on the date set out on the Notice so an Order of Possession is no longer required.

In respect to the landlord's claim for unpaid rent, I find the onus is on her to prove the tenant did not pay rent for February 2017. As proof, the landlord pointed out some ambiguous undated emails which she had filed as evidence. I examined the emails in evidence and I find them inconclusive. One undated email from the tenant said she is entitled to two months free rent but she explained in the hearing that she was advised by the Residential Tenancy Branch that it was not true so she paid the rent to a person living in the home. I find she emailed on Feb. 19, 2017, "Do you have proof we didn't pay rent. Because we did pay rent". I find no email from the landlord contradicting the tenant's Feb. 19, 2017 email although there are a lot of emails concerning complaints about each other. The tenant said she paid in cash and was never given receipts; this is supported by her emails asking for receipts. I find the tenant's evidence credible that she paid her rent in cash to one of the residents of the landlord's home who was to pass it on to the landlord.

The landlord did not submit any ledgers, accounting records or receipt books to support her claim for unpaid rent. I find the email evidence insufficient to support her claim as discussed above. In the absence of any records that a competent, businesslike landlord would be expected to maintain, I accept the tenant's testimony that she paid rent for February 2017.

Conclusion:

I find the landlord no longer requires an Order of Possession as the tenant has vacated. I find insufficient evidence to support her claim for a monetary order for unpaid rent. I dismiss this portion of her claim. However, I find her entitled to recover her filing fee for she did not know on February 20, 2017 when she filed her Application that the tenant was vacating on February 28, 2017.

I HEREBY ORDER THAT the landlord may recover her filing fee by deducting \$100 from the tenant's security deposit. This will leave a balance of \$250 in trust for the tenant to be dealt with in accordance with section 38 of the Act.

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: March 16, 2017

Residential Tenancy Branch