



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPC, FF

Introduction

The landlord applies for an order of possession pursuant to a one month Notice to End Tenancy for repeated late rent dated January 30, 2017. She also seeks an order of possession claiming she wants the rental unit for another purpose, however no Notice to End Tenancy of any form has been given to the tenant indicating such a reason.

During the hearing the landlord advanced a claim for damages for damage the tenant is alleged to have caused to a freshly poured concrete area. The landlord's cost of repair is presently uncertain. I decline to deal with the matter of the concrete damage. The landlord is free to re-apply once her losses have been quantified.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has this tenancy ended as the result of the one month Notice? Is the landlord then entitled to an order of possession and, if so, for what date?

Background and Evidence

The rental unit is a two bedroom suite in the lower portion of the landlord's house. The landlord lives at that location and rents out a second two bedroom rental unit to others.

The tenancy started in February 2016. There is no written tenancy agreement. The monthly rent is \$1037.00, due on the first of each month. The landlord holds a \$500.00 security deposit.

The tenant acknowledges receiving the one month Notice on January 31, 2017. He had raised the fact of the Notice in a previous hearing (RTB file number shown on cover page of this decision) held March 8, 2017. He has not made a formal application of his own to dispute the Notice. The arbitrator at the March 8 hearing noted:

The Tenant stated that he did not receive a One Month Notice to End Tenancy, dated January 30, 2017, and he did not anticipate that issue at these proceedings. I note that the Tenant submitted a copy of a One Month Notice to End Tenancy when he submitted evidence to the Residential Tenancy Branch on February 23, 2017, so it is highly unlikely that he did not receive that One Month Notice to End Tenancy.

The parties were advised that the Tenant has not applied to cancel a One Month Notice to End Tenancy. The Tenant confirmed that he did not intend to apply to cancel a One Month Notice to End Tenancy.

As the Tenant did not apply to cancel a One Month Notice to End Tenancy and he clearly indicated that he did not intend to apply to cancel a One Month Notice to End Tenancy, I will not be considering that matter at these proceedings.

Analysis

Section 47 of the *Residential Tenancy Act* (the "Act") deals with Notices of this type and it is strict. Sections 47(4) and (5) provide:

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

The tenant has failed to dispute the Notice by making an application for dispute resolution. As a result he is conclusively presumed to have accepted that the tenancy ends on the February 28, 2017 effective date in the Notice.

As this tenancy has ended, the landlord is entitled to an order of possession.

Conclusion

The landlord will have an order of possession. As the tenant has paid occupation rent for April, the order will be effective April 30, 2017.

The landlord does not claim recovery of any 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: April 13, 2017

Residential Tenancy Branch