



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Blitz Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FF
 CNR, FF

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 to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord.

The parties both appeared, and the tenant was assisted by a translator who was affirmed to well and truly interpret the proceedings from the English language to the tenant's first language and from the tenant's first language to the English language to the best of his skill and ability.

The parties each gave affirmed testimony and were given the opportunity to question each other.

The tenant did not provide copies of photographs to the landlord that had been provided to the Residential Tenancy Branch. Any evidence that any party wishes to rely on must be provided to the other party in accordance with the Residential Tenancy Branch Rules of Procedure. Since the tenant has not provided the photographs to the landlord, I decline to consider them. The parties agreed that all other evidentiary material has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- 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?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on March 1, 2013 and reverted to a month-to-month tenancy after the first 6 months, and the tenant still resides in the rental unit. Rent is currently payable on the 1st day of each month in the amount of \$790.00 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 \$370.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the 2nd floor of a 3-story apartment building, and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenant was served by registered mail with a 1 Month Notice to End Tenancy for Cause on April 3, 2017, and a copy has been provided, along with proof of that method of service. It is dated April 1, 2017 and contains an effective date of vacancy of May 1, 2017. The reasons for issuing it state:

- 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 interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord has provided receipts for the payment of rent showing that rent was collected on November 3, 2016; October 3, 2016; March 2, 2017 and April 3, 2017 and the landlord's agent testified that the receipts were issued and dated on the date that rent was actually received. He is the manager, and collecting rent on time is his most important job. Notices are placed in the lobby reminding of rent due, and the landlord's agent is in the office all day on the 1st of each month for that purpose.

The landlord's agent also testified that several friends of the tenant have been seen entering and exiting the rental unit, specifically one woman who the tenant said is his daughter, but the landlord's agent does not believe that. That woman has also disturbed other tenants with noise. Two or three other men have also stayed in the rental unit sometimes for months, but it's rented for 1 person. Guests visiting for a day or so are okay, but some of them have stayed for 3 weeks or up to 2 months. The landlord's agent has seen them use a key to enter which was not provided by the landlord.

The landlord's agent asked the tenant to pay a late fee, and the tenant began yelling and swearing at the landlord's agent in front of another tenant who was in the landlord's

office to pay rent. The other tenant was disturbed and fearful, and asked the landlord's agent why he allowed the tenant to talk to him like that. A witness statement from that tenant has been provided for this hearing.

With respect to illegal activity, the landlord's agent testified that the tenant talks to other tenants badly about the landlord's agent, swears at the landlord's agent and it's really hard to continue to deal with the tenant and do the manager's job. On April 1, 2017 another tenant in the rental complex alerted the landlord's agent to a girl fighting with a man on the stairs and yelling. The landlord's agent told them to stop and leave, but they didn't care what he said until he threatened to call police. A witness statement has also been provided for this hearing. This was not the first time of such disturbances and the landlord's agent has witnessed the fellow who was fighting go to the tenant's rental unit, and recognizes the fellow as a previous tenant in the complex.

No written warnings have been provided to the tenant with the exception of written reminders of rent becoming due.

The tenant testified that rent was late in April because on April 1, 2017, being a Saturday, the tenant went to pay the rent but the manager was not in the office. The tenant located him working in the yard and the manager told the tenant he could pay rent on the following Monday. The tenant did so and another lady was there paying rent. When the landlord told the tenant he had to pay a late fee, the tenant questioned why the lady didn't have to pay a late fee, and the landlord told the tenant to "get lost." With respect to swearing and yelling at the landlord's agent, the tenant testified that the landlord started a verbal assault on the tenant in front of the other lady.

The tenant is not in a good physical condition and the landlord's manager said that he would collect the rent. If he was late collecting it, it wasn't the tenant's fault.

The tenant's ex-wife visited from over-seas and spent 20 days in the tenant's rental unit. The person the landlord's agent referred to as a daughter of the tenant is a person the tenant treats as a daughter, but she lives elsewhere. She also takes care of the tenant, reminding the tenant to take medication and ensuring the tenant doesn't get them mixed up. She goes to the rental unit daily, ringing the buzzer or, when the buzzer isn't working, the tenant drops a key from the window of the rental unit to her. The tenant has difficulty getting up or walking well, and has given the tenant's translator a key, but no one else.

The tenant denies any other men living there and testified that the landlord is lying.

When asked about fighting in the stairway of the apartment complex, the tenant testified that whoever it was, it's not his problem and does not believe they were guests of the tenant.

The tenant also testified that for the past month, the tenant hasn't taken a shower because it's broken, and there are other deficiencies all ignored by the landlord's agent. The Residential Tenancy Branch told the tenant to give a letter to the landlord, and when he did, the landlord served the notice to end the tenancy.

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 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*. The reasons for issuing it are in dispute.

The receipts issued for the payment of rent ought to be sufficient to prove that the tenant is repeatedly late paying rent, however the tenant testified that the landlord said that due to the tenant's physical condition, the landlord's agent would collect rent. He also testified that April's rent was late because the landlord's agent wasn't in his office to collect it on April 1, and told the tenant he could pay on the following Monday, but that is disputed by the landlord's agent. The tenant also testified that he was at the office again on the following Monday. The tenant has a lady look in on him daily. Certainly that person would assist the tenant with the payment of rent if necessary, and the landlord's office is in the rental complex. I do not accept the testimony of the tenant that the landlord's agent agreed to attend monthly at the rental unit to collect rent and if he was late, it was his own fault. Three late payments is the minimum number that satisfies evidence of repeated late rent. I find that the tenant has been repeatedly late paying rent over the last 6 months, having paid on the 2nd or 3rd days on at least 4 occasions.

I am not satisfied that the landlord has established any illegal activity. Regardless of who started the verbal assaults, that is not illegal unless the person threatened to cause death or serious bodily harm, and there is no evidence of that.

Having found that the tenant is repeatedly late paying rent, it is not necessary to address the remaining reasons contained in the notice to end tenancy. The tenant's application is dismissed, and I grant an Order of Possession in favour of the landlord.

The landlord testified that the 1 Month Notice to End Tenancy for Cause was served on the tenant by registered mail on April 3, 2017, which is deemed to have been served 5 days later, or April 8, 2017. The *Act* requires that such a notice be served before the date rent is payable under the tenancy agreement, and must be effective on the last day of the rental period of the following month. The *Act* also states that incorrect effective dates contained in such a notice are changed to the nearest date that complies with the *Act*, which I find is May 31, 2017. Therefore, I grant the Order of Possession effective at 1:00 p.m. on May 31, 2017.

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.

I hereby grant an Order of Possession in favour of the landlord effective May 31, 2017 at 1:00 p.m.

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: May 12, 2017

Residential Tenancy Branch