



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNSD OPC

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (“the Act”) for orders as follows:

- an Order of Possession for Cause pursuant to section 47 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- an Order to retain the security deposit from the tenant pursuant to section 38 of the *Act*; and
- an application for a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord was present at the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony and to make submissions evidence under oath.

The landlord stated that she posted a copy of the 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) on the tenant’s door on January 31, 2017. Pursuant to sections 88 and 90 of the *Act* the tenant is deemed served with the 1 Month Notice on February 2, 2017.

The landlord provided undisputed testimony that she served the tenant in person on May 2, 2017 with her Application for Dispute Resolution hearing package (“Application for Dispute”). Pursuant to sections 89 and 90 of the *Act* the tenant is deemed to have been served with the landlord’s Application for Dispute on May 5, 2017.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Can the landlord recover the filing fee?

Is the landlord entitled to a monetary award?

Can the landlord retain the security deposit?

Background and Evidence

The landlord provided undisputed testimony that this tenancy began on July 1, 2011. Rent is \$550.00 per month and the landlord continues to hold a \$250.00 security deposit.

The landlord explained that she sought an Order of Possession because the tenant had been violent, uncooperative, had damaged the apartment, had changed the locks without permission, left garbage on the property and had been harassing another tenant who lived on the rental property. In addition, the landlord sought a Monetary Order of \$550.00 for unpaid rent for the month of May 2017. The landlord explained that she had assumed that the tenant would vacate the rental unit and therefore returned the May 2017 rent to the social services agency that pay rent on the tenant's behalf.

During the course of the hearing, I highlighted some concerns that I had surrounding the landlord's 1 Month Notice entered to the hearing as part of her evidentiary package. I explained that she had not provided the second half of the sheet which contained reasons as to why she was seeking an Order of Possession and which has important information for the tenant on how the landlord's application may be challenged.

Analysis – Order of Possession

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the 1 Month Notice entered into written evidence and the landlord's sworn testimony describing the document served on the tenant, I find that the landlord's 1 Month Notice does not comply with section 52 of the *Act*. Section 52 of the *Act* states –

52 In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) **state the grounds for ending the tenancy**, and
- (e) when given by a landlord, be in the approved form.

As outlined below, I find that the landlord served the tenant with a notice that fails to comply with these requirements. Specifically;

- 1) The grounds for ending the tenancy are not present anywhere on the form;
- 2) A 1 Month Notice to End Tenancy for Cause is a doubled sided form. The form presented by the landlord contains a blank second side.

During the course of the hearing the landlord was unable to provide an exact reason cited as to why she issued a 1 Month Notice. The landlord described some situations and issues she had with the tenancy but did not provide a reason for this tenancy to end. Based on these facts, I find that the landlord's 1 Month Notice does not comply with section 52 of the *Act*. I find that this notice is of no force or effect and that the tenancy shall continue.

Analysis – Monetary Order

The landlord has applied for a Monetary Order of \$550.00. This figure represents unpaid rent for the month of May 2017. The landlord explained that rent had been paid on time by a social services agency that pays the rent on behalf of the tenant, but she had returned these funds to the agency because she had assumed that the tenant would have vacated the rental unit.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The above grounds are the only ways that a landlord can qualify for a monetary award. Unfortunately, it was the landlord's own actions that have caused her to suffer financial loss. The tenant took no actions to cause the landlord to not receive her rent for May

2017 and the only loss that has resulted from this tenancy is that of the landlord's doing. No evidence was presented at the hearing that the tenant did not pay rent, or that the tenant took any steps to prevent rent from being paid by his social services agency. Due to the landlord's own actions leading to a loss, the landlord's application for a Monetary Order is dismissed.

The landlord has also applied to retain the security deposit. Since this tenancy is continuing, this application is premature. A landlord may only apply to retain a security deposit following the conclusion of a tenancy. As such, the landlord's application to retain the tenant's security deposit is dismissed.

As the landlord failed in her application for an Order of Possession and for a monetary award, she must bear the cost of the \$100.00 filing fee.

Conclusion

The landlord's application for an Order of Possession is dismissed. This tenancy shall continue until it is ended in accordance with the *Act*.

The landlord's applications for a monetary order and for an order to retain the security deposit are dismissed.

The landlord's application for a return of the filing fee is dismissed.

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 24, 2017

Residential Tenancy Branch