



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; for an Order of Possession for cause; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing with a translator, and both tenants also attended. The translator was affirmed to well and truly interpret the proceedings from the English language to the landlord's native language and from the landlord's native language to the English language to the best of his skill and ability. The landlord and one of the tenants gave affirmed testimony.

At the commencement of the hearing, the tenant applied to adjourn the hearing to allow more time to seek assistance from the Friendship Centre. The landlord opposed the adjournment. The tenant advised that she had over a month since service of the Landlord's Application for Dispute Resolution and notice of this hearing to seek assistance, but they were too busy. I found that it would be prejudicial to the landlord to adjourn the hearing, and considering the time that the tenants had to seek assistance, the hearing was ordered to convene.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that either or both of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were issued in accordance with the *Residential Tenancy Act*?

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this 6 month fixed term tenancy began on June 10, 2015 and the tenants still reside in the rental unit, now on a month-to-month basis. Rent in the amount of \$900.00 per month is payable on the 10th day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$500.00 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. A copy of the tenancy agreement has been provided for this hearing.

On April 24, 2017 the landlord served the tenants with a notice to end the tenancy written in a letter. The landlord later served the tenants with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing. It is dated May 15, 2017 and contains an effective date of vacancy of May 24, 2017. The reasons for issuing it state:

- 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;
 - put the landlord's property at significant risk.

The landlord testified that the notice was issued as a result of a fight that took place outside the rental unit which has left the landlord afraid and depressed.

On June 2, 2017 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided which is dated June 2, 2017 and contains an effective date of vacancy of June 12, 2017 for unpaid rent in the amount of \$900.00 that was due on May 10, 2017.

On June 30, 2017 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided which is dated June 30, 2017 and contains an effective date of vacancy of July 10, 2017 for unpaid rent in the amount of \$1,800.00 that was due on May 10, 2017.

The landlord has not been served with an application for dispute resolution by either tenant disputing the notice. The tenants are currently in arrears of rent the sum of \$3,300.00, having only paid \$300.00 since May, 2017.

The tenant testified that the other tenant is her daughter, who had a relationship with a man who got into a fight. Police were called and the altercation, which was on the street, had nothing to do with the tenant.

The landlord served the tenant with a notice to end a tenancy written on a piece of paper that was not a proper notice. The tenant refused to pay rent until the landlord withdrew it, but instead issued a One Month Notice to End Tenancy for Cause.

The tenant didn't know that she had to dispute the notices. The tenant went to the Friendship Centre and they were too busy to help the tenants.

Analysis

Once a tenant is served with a notice to end a tenancy given by a landlord, there are deadlines for the tenant to dispute the notice by filing an application for dispute resolution, and if the tenant fails to do so, the *Residential Tenancy Act* states that the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenants do not deny receiving any of the notices to end the tenancy and have not disputed any of them. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed on all of the notices given to the tenants, I grant the Order of Possession on 2 days notice to the tenants.

The tenants do not dispute that rent hasn't been paid, and the *Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. I am satisfied that the landlord has established the \$3,300.00 claim.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$500.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenants for the difference in the amount of \$2,900.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further order the landlord to keep the \$500.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,900.00.

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: August 14, 2017

Residential Tenancy Branch