



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PPG MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on June 21, 2017 (the "1 Month Notice") and to recover the filing fee.

The hearing was conducted by teleconference on September 25, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me. The Landlord was represented by J.W., who advised she had recently taken over as Resident Manager from N.Z.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision

Preliminary Matter

The original owner, R.P.J.C., was named as Landlord on the residential tenancy agreement. J.W. testified that approximately one to two years ago, the company, P.P.G.M. purchased the property. The Landlord testified that the one of P.P.G.M.'s management companies, R.V.I. took over management of this property approximately a year and a half ago. Introduced in evidence was a letter to all residents of the rental building dated September 2, 2015 informing the Tenants of the new management, R.V.I.

The Property Manager, N.Z., signed the 1 Month Notice as well as the Landlord's Application for Dispute Resolution. The address of the rental property is the same on the 1 Month Notice as well as on the Application.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure* I amend the Landlord's Application to accurately name the Landlord as R.V.I.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the tenancy agreement confirming this tenancy began October 1, 2014. Monthly rent was \$675.00 at the time the tenancy began. Rent increased during the tenancy such that rent is currently \$694.00 per month.

On June 21, 2017 the Landlord issued the 1 Month Notice. A copy of the Proof of Service Notice to End Tenancy, signed by N.Z., was provided in evidence and which indicated that the 1 Month Notice was served by registered mail on July 17, 2017. Notably, on the Landlord's Application for Dispute Resolution N.Z. wrote that the 1 Month Notice had been posted to the door on June 28, 2017.

The Notice informed the Tenant that she had ten (10) days in which to file an application disputing the Notice. The Landlord testified that the Tenant did not dispute the Notice.

The reasons cited on the 1 Month Notice were that the Tenant repeatedly late paying rent. In support, the Landlord provided copies 10 Day Notices to End Tenancy for Unpaid Rent or Utilities issued on the following dates:

- June 6, 2016;
- December 9, 2016;
- January 9, 2017;
- February 3, 2017;
- March 6, 2017;

The Tenant testified that she received the registered mail package including the Landlord's Application for Dispute Resolution. The Tenant stated that this was the first time she saw the 1 Month Notice as well as all the 10 Day Notices to End Tenancy. She stated that at no time did the Landlord post anything to her door. The Tenant insisted that at no time were any notices

posted to her door, stating that her neighbours would attest to this, and noting the Landlord's security cameras would show such documents. She stated that she was so certain no such documents were posted to her door that she asked the Landlord to provide her with the security camera footage which she says would show that no documents were ever posted to her door.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities I find as follows.

Residential Tenancy Branch Rules of Procedure Rule 7.8 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first as it is the Landlord who bears the burden of proving the Notice.

Section 47 of the *Act*, provides that a Tenant has 10 days from receipt of a 1 Month Notice to make an application for dispute resolution, failing which they are conclusively presumed to accept the end of the tenancy and must move out. Consequently, it is essential that I determine the date the Notice is served on the Tenant.

I am unable, based on the evidence before me to determine when the 1 Month Notice was served on the Tenant. The materials filed by the Landlord are inconsistent, in that the signed Proof of Service indicates the Notice was served by registered mail on July 17, 2017 whereas the Landlord's Application for Dispute Resolution informs me that it was served by posting to the rental unit door on June 28, 2017. S.W. was not able to testify as to service as she stated she was not the manager at the time. N.Z. was not in attendance at the hearing to testify as to service, or to explain the discrepancies in the documents she signed.

The Tenant testified that the first time she saw the 1 Month Notice was when she received the Landlord's Application materials, which she confirms she received by registered mail. The Tenant further testified that the first time she saw the 10 Day Notice(s) was also at the time she received the Landlord's registered mail package.

In the normal course a Tenant is to be served a notice to end tenancy and then is given an opportunity (within strict time limits) to apply to dispute the notice. In this case, I find it likely that the Tenant received the 1 Month Notice at the same time as she received the Landlord's Application; this is not proper service of a notice to end tenancy. It is also the case that the Landlord noted on the Application was not a company with which the Tenant had any familiarity; in addition, the Tenant observed that the Landlord wrote on the Application that she had been served the 1 Month Notice on June 28, 2017, which she claims is false.

While I amended the Landlord's Application to correctly note the Landlord, I am unable to amend the Application to correct or clarify information relating to service of the 1 Month Notice.

In all the circumstances, I dismiss the Landlord's Application for an Order of Possession based on the 1 Month Notice as I find the Landlord has not been able to prove when the Tenant was served the 1 Month Notice.

The Tenant was cautioned that pursuant to section 26 of the *Act*, she must pay rent, even if the Landlord is in breach of the *Act*, the *Regulations* or the tenancy agreement; for greater clarity I reproduce that section as follows:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Conclusion

The Landlord failed to prove when the Tenant was served the 1 Month Notice to End Tenancy. The Landlord's Application for an Order of Possession is dismissed. Having been unsuccessful the Landlord is not entitled to recover the 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: September 25, 2017

Residential Tenancy Branch