



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC, OPL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking an Order of Possession for cause and an Order of Possession for landlord's use of property.

The landlord and an agent, being the spouse of the tenant attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to give submissions and discuss settlement.

Issue(s) to be Decided

- Has the landlord established that a One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that a Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable on the 1st day of each month, however, not being an experienced landlord, the landlord raised the rent to \$1,000.00 per month commencing September 1, 2017 and agrees that the tenants have overpaid by \$200.00 for each of the months of September and October, 2 017. There are no rental arrears.

No written tenancy agreement exists and no security deposit or pet damage deposit was collected by the landlord. The rental unit is a basement suite and the landlord and family reside in the upper level of the home.

The landlord further testified that on August 11, 2017 he personally served the tenant's agent, who is the tenant's spouse, with a Two Month Notice to End Tenancy for Landlord's Use of Property. A copy has been provided as evidence for this hearing and it is dated August 10, 2017 and contains an effective date of vacancy of October 31, 2017. The reason for issuing it states:

"The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse)."

The landlord testified that his parents currently reside in the upper level of the home with the landlord and the landlord's family. The landlord's father has a bad back and his parents will be moving into the rental unit to avoid the stairs. The landlord has not provided the tenants with a free month of rent.

The landlord also served a One Month Notice to End Tenancy for Cause, but a copy has not been provided for this hearing.

The landlord testified that the tenants have not served the landlord with an application for dispute resolution disputing either notice.

The tenant's agent did not speak English very well and was difficult to understand. No translator attended the hearing to assist. The tenant's agent agrees that the landlord personally served the Two Month Notice to End Tenancy for Landlord's Use of Property on August 11, 2017, however the tenants seek more time to move out.

Analysis

The *Residential Tenancy Act* states that if a tenant does not dispute a notice to end a tenancy given by a landlord, the tenant is conclusively presumed to have accepted the end of the tenancy.

The landlord has not provided a copy of a One Month Notice to End Tenancy for Cause, and therefore, I dismiss the landlord's application for an Order of Possession for cause.

However, the parties agree that the tenant's agent (spouse) was personally served with the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) on August 11, 2017. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*. The landlord testified that the tenants have not served the landlord with an application for dispute resolution disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession effective October 31, 2017 at 1:00 p.m.

Where a landlord serves a Two Month Notice to End Tenancy for Landlord's Use of Property the landlord must provide the tenant with the equivalent of one month's rent. That is usually accomplished by not collecting rent for the last month of the tenancy. In this case, the landlord

collected rent for each month, and increased rent contrary to the law. Therefore, I order the landlord to comply with the *Residential Tenancy Act* by providing to the tenant the equivalent of one month's rent of \$800.00 and reimbursement of the illegal rent increase of \$200.00 for each of September and October, 2017. If the landlord fails to do so the tenants will be at liberty to apply for monetary compensation.

Also, the *Act* specifies that if the rental unit is not used for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property within a reasonable time after the end of this tenancy, and is not used for that purpose for at least 6 months, the tenants will be at liberty to apply for further compensation.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord for that amount.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for cause is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord based on the Two Month Notice to End Tenancy for Landlord's Use of Property, effective at 1:00 p.m. on October 31, 2017.

I further order the landlord to comply with the *Residential Tenancy Act*. If the landlord fails to do so, the tenants will be at liberty to apply for compensation.

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.

These orders are 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: October 10, 2017

Residential Tenancy Branch