



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S OPC

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession for cause; a monetary order for unpaid rent or utilities; an order permitting the landlords 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 hearing did not conclude on the first day scheduled, and was adjourned. My Interim Decision was provided to the parties.

One of the landlords and one of the tenants attended the hearing on both scheduled dates, and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the landlords 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 fixed term tenancy began on December 1, 2017 and expires on May 31, 2018 after which the agreement reverts to a month-to-month

tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$1,600.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a suite in a house and another suite within the house is also tenanted. The landlord does not reside on the residential property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on February 28, 2018 the landlord served one of the tenants personally with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing. It is dated February 28, 2018 and contains an effective date of vacancy of March 31, 2018. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlords have not been served with an Application for Dispute Resolution by the tenants disputing the notice or a notice of hearing, however the landlord called the Residential Tenancy Branch who said that the tenants had filed a dispute.

The tenants are currently in arrears of rent the sum of \$3,200.00, having paid no rent for either of the months of March or April, 2018, which the landlords claim as against the tenants. Rather than collecting the rent for March, 2018, the landlord believed that once the One Month Notice to End Tenancy for cause was issued, the tenants had 30 days to move out rent free. However, the tenants didn't move out in accordance with the notice and didn't pay the rent for April either.

The tenant testified that they had the rent money for March, 2018 but the landlord didn't ask for it.

The tenants are good people and were also afraid. The tenants attempted numerous times to get rid of an individual who was supposed to stay at the rental unit for one night, but the tenants couldn't get rid of him and were fearful for their lives. The incident was not premeditated; the tenants are just nice people trying to help someone else out.

The tenant filed an Application for Dispute Resolution and applied for a fee waiver and never heard back from the Residential Tenancy Branch about a hearing. When the landlord served the tenants with the landlord's application and notice of hearing, the tenant thought it was due to what the tenant had filed.

The tenant agrees that the rent is owed, but funds are limited. The tenants found another place effective July 1, 2018 and have a child, and had to pay \$2,400.00 today to secure that rental.

During the course of the hearing, while the parties were present and with their consent, I searched the Residential Tenancy Branch case management system and located an Application for Dispute Resolution filed by the tenants which is marked as “abandoned.”

Analysis

The *Residential Tenancy Act* states that where a tenant is served with a One Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute it by filing an Application for Dispute Resolution and serving the landlord. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy.

The Residential Tenancy Branch accepts on-line applications for dispute resolution and provides detailed instructions about what steps to take to obtain a hearing date and a Hearing Package to serve on the respondent. In this case, the tenant appears to have no idea why the system is marked as “abandoned.” The tenant did not explain what steps he took, and did not explain whether or not he contacted the Residential Tenancy Branch to enquire about a hearing date. I find that the tenant did not follow through with the instructions, and therefore has not effectively disputed the notice. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy.

I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*, and I find that the landlords are entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

The tenants do not dispute the unpaid rent and I find that the landlords have established a claim of \$3,200.00.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$800.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords as against the tenants for the difference in the amount of \$2,500.00.

Conclusion

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

I further order the landlords to keep the \$800.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,500.00.

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: April 25, 2018

Residential Tenancy Branch