



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC FFL
CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants as against an individual landlord, and an amended application made by a landlord company as against the tenants.

The tenants have applied for an order cancelling a notice to end the tenancy for cause, and the landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of the application. The landlord's amendment states that a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued and seeks an Order of Possession for non payment of rent.

The individual landlord (hereafter referred to as "the landlord") and an agent for the landlord company attended the hearing and each gave affirmed testimony. Both tenants also attended and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

At the commencement of the hearing, the landlord applied to adjourn the hearing stating that she was calling in from the airport, already having gone through security. The tenants did not agree to adjourn. The landlord submitted that the tenants have not served the landlord or the landlord company with the Tenant's Application for Dispute Resolution, and the landlord only learned of it when the landlord filed the Landlord's Application for Dispute Resolution.

The *Residential Tenancy Act* requires a party who makes a claim to serve the Hearing Package on the other party within 3 days of making the application. The tenants filed the Application for Dispute Resolution on September 5, 2018 and have provided a Canada Post cash register receipt dated September 5, 2018 containing a tracking number, and one of the tenants testified to the address that it was sent to. The tenants have also provided a Canada Post document entitled "Track a Package Printout" which does not indicate that it was received, but shows that the item was accepted at the Post Office on September 5, 2018.

The *Residential Tenancy Act* permits registered mail as a means of service of an Application for Dispute Resolution, and any other documents. The *Act* also specifies that documents served in that manner are deemed to have been served 5 days later. I find that the tenants have complied, and the landlord is deemed to have been served on September 10, 2018. Given that the landlord company has also made an application, I declined to adjourn the hearing.

No further issues respecting 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

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 21, 2016 and the tenants still reside in the rental unit.

In September, 2017 the tenants were provided with a letter explaining that the landlord on the tenancy agreement is no longer the landlord, and the tenants are to communicate with and pay rent to the landlord company.

On August 27, 2018 the landlord's agent served the tenants with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated August 27, 2018 and contains an effective date of vacancy of September 30, 2018. The reasons for issuing it are:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the unit.

After the hearing had concluded, I noticed a light colored "x" in the box on the second page of the Notice to indicate another reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

Also provided is a Proof of Service document which the landlord testified was signed by the landlord's agent in the wrong place, but the tenants were in fact served on that date and in that manner.

The tenants were in arrears of rent for several months the sum of \$60.00, and the landlord gave notices to end the tenancy, but months went by and the landlord didn't get paid. The previous landlord told the landlord about 2 weeks ago to remove the arrears, assumingly for work done by the tenant for the previous landlord.

Also, the tenants moved in the tenant's ex-husband and children, but it's a one-bedroom apartment. The landlord has provided a copy of a letter addressed to the tenants dated August 11, 2018 stating that the additional occupants that are not listed on the tenancy agreement, must vacate within 7 days, and that failing to comply may result in the landlord opting to end the tenancy. The additional occupants moved out about September 25 or 26, 2018.

The landlord has also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 8, 2018 and containing an effective date of vacancy of August 19, 2018 for unpaid rent in the amount of \$780.00 that was due on August 1, 2018. The tenants made a partial payment on August 20 of \$570.00 and another partial payment on August 22, 2018 in the amount of \$210.00. The landlord has provided receipts indicating that the rent money was received for Use and Occupancy Only, and does not reinstate the tenancy. The tenants have not served the landlord with an Application for Dispute Resolution disputing it.

The landlord's agent testified that the tenancy agreement, a copy of which has been provided for this hearing specifies rent in the amount of \$750.00, but the landlord's agent does not know the current amount. The rental unit is an apartment in a complex containing 30 units, and the landlord's agent also resides in the complex.

The tenant's ex-husband and 2 kids were residing in the rental unit with the tenants for over a month.

The tenant testified that rent is directly deposited to the landlord from a government Ministry and has been for 2 years; the tenants have no control over that. The tenant tried to get information from the Ministry about late payments but they wouldn't give it to him. In August, 2018 the tenants were in treatment, and arrived home on August 4. When they got the Notice, they went to Social Services, and they fixed the problem. The tenant does not know when rent may have been late other than in August.

The previous landlord is the owner of the building, and the tenants both worked for him. While working with the previous landlord, the tenant asked about renting the apartment they were working on to the other tenant's ex-husband, who needed a place. The landlord said that it would be up to the current landlord. The tenant told him that the ex-husband and 2 kids were staying in the rental unit. At first it was just supposed to be the 2 kids, but they are also the children of the other tenant, and visits are to be supervised and the Ministry wanted the ex-husband to be with the kids.

The tenant denies receiving a letter from the landlord about the occupants. The Notices to End the Tenancy were on the door, but no letters. The tenant talked to someone at the Residential

Tenancy Branch about disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and was advised that because this hearing was already scheduled, the tenants didn't need to dispute it.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

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*. The reasons for issuing it are in dispute.

In order to end a tenancy for repeated late rent, the landlord must be able to establish that the tenants were late with rent no less than 3 times, and if there are lengthy periods of time between those late payments, the tenants cannot be considered to have been repeatedly late. In this case, the landlord was not able to tell me when the tenants were late, other than \$60.00 owed for several months, which was eventually subtracted by the landlord it was owed to. I am not satisfied that the landlord has established repeated late rent.

Neither the landlord nor the landlord's agent lead any evidence of the tenants or a person permitted on the property by the tenant interfering with or unreasonably disturbing another occupant or the landlord.

With respect to having an unreasonable number of occupants in the rental unit, I have reviewed the tenancy agreement, which states, in part: "1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit;" and 3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy."

The landlord has provided a copy of a letter addressed to the tenants dated August 11, 2018 stating that the additional occupants must vacate within 7 days. The One Month Notice to End Tenancy for Cause was served on August 27, 2018. The landlord testified that the additional occupants moved out about September 25 or 26, 2018, and the landlord's agent testified that they were there for over a month. The tenant testified that they were only there 4 days. I prefer the testimony of the landlord's agent, who also resides in the rental complex.

I find that the landlord had cause to issue the Notice, and the tenants' application to cancel it is dismissed. Since the effective date of vacancy has passed, and having found that it is in the approved form and contains information required by the *Act*, I grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount and I order that the landlord be permitted to keep that amount from the security deposit currently held in trust, or may otherwise recover it.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further 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 \$100.00 and I order that the landlord be permitted to keep that amount from the security deposit currently held in trust or may otherwise recover it.

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: October 18, 2018

Residential Tenancy Branch