



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding R GLEN WHITE INSURANCE AGENCY 2007 LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL, MNDC, MNSD, RPP, FFT

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”). The matter was set for a conference call hearing.

On June 30, 2018, the Tenant applied seeking money owed or compensation for damage or loss; for the return of a security deposit; for the return of personal property and to recover the cost of the filing fee. On August 7, 2018, the Tenant amended her application to increase the monetary claim to \$8,679.67.

On August 22, 2018, the Landlord applied requesting an order of possession based on issuance of a 1 Month Notice To End Tenancy For Cause dated June 27, 2018, and to recover the cost of the application fee.

Both parties were present at the hearing on October 12, 2018. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the hearing on October 12, 2018, the Landlord's application was heard. There was insufficient time to hear the Tenant's Application and the hearing was adjourned to be scheduled at a future date and time. In the Interim Decision sent to the parties, they were informed that failure to attend the adjourned hearing may result in the hearing proceeding in their absence.

The adjourned hearing was set for hearing by telephone conference call at 9:30 AM on this date. The line remained open while the phone system was monitored for fifteen minutes and the Tenant did not call into the hearing during this time. Therefore, as the Tenant did not attend the hearing by 9:45 AM, to pursue her claims; and since the Landlord was present and ready to proceed, I dismiss the Tenant's claim without leave to reapply.

Issues to be Decided

- Is the Landlord entitled to an order of possession for the rental unit?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy commenced on June 1, 2018, as a six month fixed term tenancy. Rent in the amount of \$2,950.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit in the amount of \$1,475.00 to the Landlord.

Landlord's Application

The Landlord testified that a 1 Month Notice To End Tenancy For Cause ("the 1 Month Notice") was posted on the Tenant's door on June 27, 2018.

The Tenant testified that she never received the 1 Month Notice because the Landlord locked her out of the rental unit on June 25, 2018.

The Tenant testified that the Landlord deactivated the electronic access fob that she used to gain entry into the building and use the elevator. The Tenant testified that she contacted the Landlord and was told he is no longer an agent for the Landlord. The Tenant testified that she sent an email to the Landlords agent Ms. S.A. and did not get a response until two days later. The Tenant testified that as of June 27, 2018, she had no

reason to make further attempts to enter the unit because the Landlord told her she was evicted.

The Landlords agent Ms. S.A. testified the locks to the Tenant's unit were changed on the evening of June 27, 2018.

The Landlord testified that the building strata council deactivated the Tenants electronic access on June 25, 2018, because they became aware the Tenants fob had been cloned. The Landlord testified that the Landlord reactivated the fob on February 25, 2018 until June 27, 2018.

The Landlord is seeking an order of possession for the rental unit based on the issuance of the 1 Month Notice To End Tenancy For Cause dated June 27, 2018.

Analysis

Section 44 of the Act provides that a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 *[tenant's notice]*;
- (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) section 49 *[landlord's notice: landlord's use of property]*;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Landlords Application

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

The Landlord is responsible for the actions of the building strata who deactivated the Tenant's electronic access to the rental property. The Landlord illegally locked the Tenant out of the rental unit when the Landlord changed the locks to the rental unit door on June 27, 2018.

I find that the tenancy ended when the Tenant was illegally locked her out of the rental unit on June 25, 2018.

Even though the tenancy has ended, the Landlord is seeking an order of possession for the rental unit based on the issuance of the 1 Month Notice To End Tenancy For Cause dated June 27, 2018.

I find that the Tenant was locked out of the building and did not receive the 1 Month Notice. I find that the Landlord locked the Tenant out of the rental unit by changing the unit door locks on June 27, 2018.

The Act provides that a notice to end tenancy posted to a Tenants door is deemed to be received on the third day after it is posted. A 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of the Notice.

I find that it is not reasonable to find that the 1 Month Notice was ever served on the Tenant. Since the Landlord did not end the tenancy pursuant to section 44 of the Act; and locked the Tenant out of the rental unit; I find that the Landlord breached the Act by ending the tenancy improperly. I find that the Landlord had a legal obligation to continue to provide accommodation to the Tenant.

I find that the 1 Month Notice was never served to the Tenant. I note that even if the 1 Month Notice had been served to the Tenant, the Landlord did not have the right to lock the Tenant out.

While the Landlord requested an order of possession, I find that the tenancy ended on June 25, 2018, and that the Landlord is not entitled to an order of possession based on the issuance of a 1 Month Notice To End Tenancy For Cause.

While I find that the Landlords breach of the Act may entitle to the Tenant to receive compensation for loss, the Tenant failed to attend the reconvened hearing to pursue her application for compensation. The Tenant's application is dismissed without leave to reapply.

Conclusion

The Landlord breached the Act by locking the Tenant out of the rental unit.

I find that the tenancy ended when the Tenant was illegally locked her out of the rental unit on June 25, 2018.

The Landlord's request for an order of possession and to recover the filing fee is denied.

The Tenant did not attend the hearing by 9:45 AM, and since the Landlord was present and ready to proceed, I dismiss the Tenant's application for compensation without leave to reapply.

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: November 27, 2018

Residential Tenancy Branch