



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC OPR
 CNC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and for an Order of Possession for unpaid rent or utilities. The tenant has applied for an order cancelling a notice to end the tenancy for cause.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised.

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*, specifically with respect to the reasons for issuing it?
- 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 April 1, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$1,100.00 per month is payable on the 1st day of each month. During the course of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was paid. The rental unit is a

basement suite and the landlord and his family reside in the upper level of the home. A tenancy agreement was signed by the parties, but a copy has not been provided for this hearing.

The landlord further testified that on April 7, 2019 the landlord served the tenant personally with a One Month Notice to End Tenancy for Cause and a copy has been provided for this hearing. It is dated April 7, 2019 and contains an effective date of vacancy of May 7, 2019. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenant smokes marihuana inside the rental unit. The landlord has 2 young daughters, and the landlord is allergic to marihuana. The landlord gave the tenant notices to stop smoking it on the property, but the tenant wouldn't listen to that.

The landlord also served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by handing it to the tenant's boyfriend who opened the door when the landlord attended the rental unit. A copy has been provided for this hearing, and it is dated April 17, 2019 and contains an effective date of vacancy of April 28, 2019 for unpaid rent in the amount of \$100.00 that was due on April 1, 2019. The tenant has not paid the outstanding rent and no rent has been paid for this month.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and no rent has been paid since the tenant was served.

The tenant testified that the landlord told the tenant he was going to use the rental unit and the tenant would be given 3 months notice and a free month of rent.

The tenant did not pay the outstanding rent of \$100.00 and agrees that no rent has been paid for May, 2019.

The tenant also testified that there are on-going issues that a landlord cannot do, such as video recordings and linking devices to the tenant's television.

The tenant's witness is the tenant's father and testified that the tenant has been paying rent, albeit it may be a few days late.

The landlord calls the police often, about too much noise in the daytime, and prevents the tenant from finding another place to live. Police show up at the rental unit and by the time the tenant can get away, the prospective rentals are already rented. There is a very low vacancy rate in the community.

Analysis

If a landlord serves a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord is required to compensate the tenant the equivalent of 1 month's rent which is usually accomplished by not collecting rent for the last month of the tenancy. However, the tenant is not entitled to such compensation if the landlord does not serve a Two Month Notice to End Tenancy for Landlord's Use of Property.

A tenant is required to pay rent even if the landlord fails to comply with the *Residential Tenancy Act* or the tenancy agreement.

In this case, the parties agree that the tenant failed to pay \$100.00 of the rent due for April, 2019 and has not paid any rent for May, 2019. If a tenant pays rent in full within 5 days of being served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the Notice is of no effect. Alternatively, the tenant can dispute the notice within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. However, the tenant has not disputed it and has not paid the rent. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*. 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. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Having found that the landlord is entitled to an Order of Possession for unpaid rent, I find it unnecessary to deal with the reasons for issuing the One Month Notice to End Tenancy for Cause.

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 in that amount. I further order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it.

The landlord has not applied for a monetary order for the unpaid rent, and therefore, I make no orders or findings with respect to the amount the landlord may be owed.

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 tenant.

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 and I order that the landlord may retain that amount from the security deposit 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: May 28, 2019

Residential Tenancy Branch