



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BIVIORA HOLDING COMPANY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC

Introduction

On May 8, 2019, the Landlord submitted an Application for Dispute Resolution requesting an order of possession for the rental unit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the conference call hearing.

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 have exchanged the documentary evidence that I have 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.

Issues to be Decided

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

Background and Evidence

The Landlord and Tenant testified that the tenancy began on November 1, 2017, on a month to month basis. Rent in the amount of \$666.00 is to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$325.00 to the Landlord.

The Landlord testified that he issued the Tenant a One Month Notice to End Tenancy for Cause ("the One Month Notice") to the Tenant by posting the Notice to the Tenant's door on March 27, 2019.

The reasons selected by the Landlord within the One Month Notice are as follows:

Tenant has engaged in illegal activity that has, or is likely to:

- *Jeopardize a lawful right or interest of another occupant or the Landlord*

The One Month Notice provides that the Tenant must move out of the rental unit by April 30, 2019.

The One Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: "You may be EVICTED if you do not respond to this Notice." The Notice also informs the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the effective date set out on page one of the Notice.

The Tenant testified that she received the One Month Notice on March 28, 2019.

The Tenant was asked why she did not dispute the One Month Notice. The Tenant provided testimony that he did not dispute the Notice because she had apologized to the Landlord and returned an item that she had taken.

The Tenant remains living in the rental unit and has paid the rent for May 2019, and June 2019.

The Landlord seeks an order of possession for the rental unit, based on an undisputed One Month Notice To End Tenancy for Cause dated March 27, 2019. The Landlord testified that May 2019, and June 2019 rent, was received but not cashed.

The Landlord agreed that if the Notice is upheld and the tenancy ended, he is willing to give the Tenant an extra month to find a place to move to.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant received a One Month Notice To End Tenancy for Cause dated March 28, 2019.

The One Month Notice provided the Tenant with her rights of dispute. The Tenant was required to dispute the Notice within 10 Days. The Tenants opportunity to dispute the Notice has expired.

I find that the Tenant did not apply to dispute the One Month Notice, and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Section 55 of the Act provides that a Landlord may request an order of possession of a rental unit when a notice to end tenancy is given by a Landlord and the Tenant has not disputed the Notice and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at 1:00 pm on July 31, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Landlord agreed that he will cash the rent cheques he has received from the Tenant for the months of May 2019, and June 2019.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep \$100.00 from the security deposit of \$325.00 in full satisfaction of the filing fee.

Conclusion

The Tenant did not file to dispute the One Month Notice. The Tenant is presumed under the legislation to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective at 1:00 pm on July 31, 2019, after service on the Tenant.

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: June 18, 2019

Residential Tenancy Branch