



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Landlord DZ attended the hearing. She was assisted by her son DM. The tenant attended the hearing, and was assisted by her roommate DB. Each party was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 88, 89, and 90 of the Act, I find that the tenant was duly served with the application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting December 15, 2018. Monthly rent is \$925.00 and is payable on the first of each month.

The tenant paid the landlords a security deposit of \$462.50. The landlords still retain this deposit. The tenancy agreement states, in part:

7. **RENT AND FEES.** Subject to clause 19, Additional Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1, 2, or 3 above, the rent will increase by \$200.00 per month. The landlord's acceptance of any additional tenant or occupant does not otherwise change this agreement or create a new tenancy

[...]

19. **ADDITIONAL OCCUPANTS.** Only persons listed in Clause 1, 2, or 3 may occupy the rental unit or residential property. Any other person who, without the landlord's prior written permission occupies or resides in the rental unit or on the residential property for more than 14 cumulative days in a calendar year will be doing so contrary to this Agreement. The tenant must apply in writing to the landlord if the tenant wishes a person not named in Clauses 1, 2, or 3 to become an occupant or co-tenant. Failure to obtain the landlord's written permission is a breach of a material term of the Agreement,

The tenant admitted that shortly after the tenancy began, she allowed DB, who was not named on the tenancy agreement, to move into the rental unit. She did not obtain written permission from the landlord of this. DB testified that he thought there was a mutual understanding between the tenant and the landlords that he could move in. Neither DB nor the tenant gave evidence that they ever sought permission from the landlords to allow DB to move into the rental unit.

The landlord testified that the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause (the "**Notice**"), dated July 5, 2019, via registered mail on July 5, 2019. The landlord provided the Canada Post tracking number, reproduced on the cover of this decision. The tenant testified that she was in the hospital for 11 days, starting July 3, 2019. She testified that she had pneumonia, and it took her six or seven weeks following her return to recover fully. She testified that, upon her return from the hospital, she received the Notice.

The Notice indicates an effective move-out date of August 10, 2019. The grounds to end the tenancy cited in the Notice were:

- 1) the tenant has allowed an unreasonable number of occupants in the unit/site;
- 2) the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

- 3) the 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;
- 4) the 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;
- 5) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- 6) tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park;
- 7) tenant has assigned or sublet the rental unit/site without landlord's written consent

The tenant has not disputed the Notice, nor has she applied for an extension of time to do so.

The tenant is not in rental arrears.

The tenant testified that a uPack storage container is scheduled to be dropped off at the rental unit on September 20, 2019, and that she hopes to be able to vacate the rental unit by the end of the month, or within the first few days of October 2019.

She testified that she no longer wants to live in the rental unit.

Analysis

Sections 47(4) and (5) of the Act state:

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b)must vacate the rental unit by that date.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice on July 10, 2019, five days after its registered mailing. Although the tenant participated in the hearing, the tenant did not file an application to dispute the Notice within 10 days, or at all.

Section 66 of the Act grants an arbitrator the authority to extend the time in which a tenant may apply to dispute a notice to end tenancy:

Director's orders: changing time limits

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59

(3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

[...]

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

However, the Act prohibits such an extension passed the effective date of a notice to end tenancy. I find that the effective date of the Notice is August 10, 2019. As such, as the effective date has passed, I have no authority to extend the time limit to allow the tenant to dispute the Notice.

I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit. It is therefore not necessary for me to determine the truth of the allegations made by the landlords in the Notice. I make no findings in those regards.

As the tenant has already paid for September's rent, I find that the landlords are entitled to an order of possession effective September 30, 2019 at 1:00pm.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the Act, I allow the landlord to retain \$100.00 of the \$462.50 security deposit in full satisfaction of the monetary award. The landlord is cautioned to follow the provisions of section 38 of the Act in regard to the balance of the security deposit (\$362.50).

Conclusion

Pursuant to section 55 of the Act, I grant an order of possession to the landlord effective two days after service on the tenant.

Pursuant to section 72 of the Act, I order the landlord to retain \$100.00 of the security deposit and address the remaining security deposit balance.

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: September 20, 2019

Residential Tenancy Branch