



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agents attended the hearing by way of conference call, the tenants did not. The landlord's agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agents testified that the tenants were personally served with the landlord's application for dispute resolution hearing package on November 1, 2019 and evidence on November 14, 2019. In accordance with sections 88 and 89 of the *Act*, I find the tenants duly served with the landlord's application and evidence package. The tenants did not submit any written evidence for this hearing.

The landlords testified that the tenant BS was personally served with 1 Month Notice to End Tenancy for Cause ('1 Month Notice') on September 11, 2019. Accordingly, I find the tenants duly served with the landlord's 1 Month Notice.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to the monetary order requested?

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

Background and Evidence

This month-to-month tenancy began on October 1, 2013, with monthly rent currently set at \$819.00, payable on the first of each month. The landlord collected a security deposit in the amount of \$365.00, which the landlord still holds.

The landlord issued the notice to end tenancy providing two grounds:

1. the tenant or a person permitted on the property by the tenant has or is likely to damage the landlord's property.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord did not submit a copy of the 1 Month Notice for this hearing. The landlord submitted in evidence a copy of the warning letters sent to the tenants, pest control reports, as well as photos of the rental unit. The landlord testified that the tenants have caused extensive damage to the home, and pose a significant risk to the landlord's property due to the unsanitary conditions caused by the tenants. The landlord is requesting an Order of Possession as well as an order to retain the security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. As this tenancy has not yet ended, I find this portion of the landlord's application to be premature, and I dismiss this portion of the application with leave to reapply.

Section 52 of the *Act* states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

As the landlord did not provide a copy of the 1 Month Notice for this hearing, I was unable to verify that the Notice complies with the requirements of section 52. Under these circumstances, I am not allowing the landlord's application for an Order of Possession for cause, and this tenancy is to continue until ended as per the *Act*.

As the landlord was not successful with this application, I dismiss the landlord's application to recover the filing fee without leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession and application to recover the filing fee without leave to reapply. The 1 Month Notice is cancelled. The 1 Month Notice of September 11, 2019 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The landlord's application to retain the security deposit is dismissed with 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 21, 2019

Residential Tenancy Branch