



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advance Realty LTD Royal Lepage
and [tenant name suppressed to protect privacy]

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 sections 47 and 55; and
- an authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The applicant landlord was represented by agent ("SG") and Property Manager ("JA"). The only respondent that attended was tenant RB. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Tenant RB confirmed that he was personally served with the landlord's application for dispute resolution package on September 23, 2019. In accordance with sections 88 and 89 of the Act, I find that the tenants were 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 tenants?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced

here. The relevant and important aspects of the landlord's and tenants' claims and my findings are set out below.

Both parties agreed that the tenancy started on October 01, 2019 and is month to month. Rent is \$1,350.00 and is due on the first day of the month. There are no rental arrears and the landlord still holds the security deposit of \$675.00 and pet deposit of \$675.00 collected at the outset of the tenancy.

Both parties also agreed that the tenants were personally served with a One Month Notice to End Tenancy for Cause (the "Notice") on July 29, 2019. The effective date of the Notice is August 31, 2019.

A copy of the Notice was provided. The grounds to end the tenancy cited in the Notice were:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - put the landlord's property at significant risk.
- 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.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice also specifies that: "Tenants have been warned about constant traffic in and out of their rental unit at all hours off the day and night. Police have been called to the park because of the traffic and have made arrests for illegal activity. We have numerous complaints of both the traffic and noise." Attached to the Notice there is a schedule of Parties naming the third tenant.

A copy of a signed Proof of Service Notice to End Tenancy form which indicates that the Notice was personally served to the tenants at 4:55 PM on July 29, 2019 was entered

into evidence. The proof of service form is signed by a witness and the agent of the landlord.

Tenant RB confirmed that the tenants did not file an application to the Residential Tenancy Branch to dispute the Notice. The landlord applied for an order of possession on September 17, 2019.

The landlord agent SG testified that:

- The Notice was served because of several complains of neighbors regarding the tenants;
- There were short visits of several people to the tenants' home;
- Visitors of the tenants verbally threatened neighbors;
- The police arrested someone in the tenants' home;
- The tenants do not clean up after their dog.

Tenant RB testified that:

- There are no illegal activities in their house;
- The tenants told the property manager they would have several visits;
- The incident related to the garbage can was caused by a visitor not related to the tenants;
- Some of the people visiting the tenants are actually looking for the previous tenant;
- The tenants have no more friends visiting them because their friends are tired of being harassed by the neighbors;
- The only people that are visiting the tenants are the care takers at night;
- He cleans up after his dog;
- The tenants live peacefully and apologize for any previous issues.

Analysis

Section 88 (a) of the Act states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;

Based on the testimony of both parties and the signed proof of service form, I find that the landlord served the Notice on the tenants personally on July 29, 2019.

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.

Section 47(5) is mandatory, and I do not have discretion as to its application. Based on the parties testimony I find that the tenants did not file an application to dispute the notice within 10 days, or at all.

Therefore, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (August 31, 2019) and must move out of the rental unit. As this has not occurred, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55 of the Act.

It is not necessary for me to determine if the tenants acted as alleged by the landlord on the Notice due to the application of sections 47(4) and (5) of the Act.

As such, I make no findings as to the truth of the landlord's allegations about the conduct of the tenants.

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 the section 72 of the Act, I allow the landlord to retain \$100.00 of the security deposit in full satisfaction of the monetary award. The landlord is cautioned to follow the provisions of section 38 of the Act in regards to the balance of the security deposit.

Conclusion

I grant an order of possession to the landlord effective two days after service.

I order that the landlord serve a copy of this decision and attached order of possession on the tenants immediately upon its receipt, in accordance with section 88 of the Act.

I order the landlord to retain \$100.00 of the security deposit and address the remaining security deposit balance in accordance with section 38 of the Act.

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 29, 2019

Residential Tenancy Branch