



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on May 15, 2020 (the “Application”). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated February 18, 2020 (the “Notice”). The Landlord also sought reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant advised at the outset that she might call her mother as a witness. The Tenant did not indicate during the hearing that she wanted to call her mother as a witness and confirmed at the end of the hearing that she had nothing further to add to her submissions. I did not hear from the Tenant’s mother during the hearing.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence and the Tenant confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2018 and was for a fixed term ending September 30, 2019. The tenancy then became a month-to-month tenancy. Rent was \$1,300.00 per month at the start of the tenancy. Rent is due on the first day of each month.

The Landlord submitted a copy of the Notice. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by an agent for the Landlord. It has an effective date of March 31, 2020. The grounds for the Notice are as follows:

1. The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
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 Agent testified that the Notice was posted on the door of the rental unit February 19, 2020. The Tenant acknowledged receiving the Notice February 19, 2020.

I asked the Tenant if she disputed the Notice. The Tenant said she did dispute it, or tried to dispute it, when she disputed a 10 Day Notice on File Number 1. The Tenant said the Notice was supposed to be dealt with at the hearing on File Number 1.

I looked File Number 1 up. It was the Tenant's Application for Dispute Resolution in relation to a 10 Day Notice. The application was filed March 10, 2020. There is no mention of a One Month Notice anywhere in the file. The Tenant did not attend the hearing and the decision only dealt with a 10 Day Notice.

The Tenant took issue with the Landlord waiting so long to enforce the Notice. The Tenant testified that agents for the Landlord "said everything was fine" after the Tenant

paid the outstanding rent in relation to the 10 Day Notice. The Tenant testified that the Agent told her the Notice was null and void.

The Agent testified as follows. The Tenant was served with a 10 Day Notice after being served with the Notice. Agents for the Landlord never indicated to the Tenant that the Notice was cancelled or withdrawn or that the Landlord was not going to enforce the Notice. The Landlord has accepted rent from the Tenant since but has issued receipts that indicate it is for "use and occupancy only". The Landlord waited to enforce the Notice because they were waiting for a decision on the 10 Day Notice and because of the current pandemic.

The Tenant agreed that she was issued receipts that say for "use and occupancy only" on them.

During the hearing, the Tenant asked that she not have to pay the filing fee because she has lost work due to the current pandemic. The Agent agreed to withdraw the request for reimbursement for the filing fee.

The Agent sought an Order of Possession effective July 31, 2020.

Analysis

The Notice was issued pursuant to section 47(1)(d)(i) and 47(1)(h) of the *Residential Tenancy Act* (the "*Act*").

Based on the testimony of both parties, I am satisfied the Notice was posted on the door of the rental unit February 19, 2020. The Tenant was served with the Notice in accordance with section 88(g) of the *Act*. The Tenant acknowledged receiving the Notice February 19, 2020.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act* as it includes all information required and is on the RTB form.

The Tenant had 10 days from receiving the Notice on February 19, 2020 to dispute it under section 47(4) of the *Act*. I do not accept that the Tenant did, or tried to, dispute the Notice when she disputed the 10 Day Notice as there is no indication anywhere in File Number 1 that the Tenant did, or attempted to, dispute a One Month Notice. Further, the Tenant had until March 02, 2020 to dispute the Notice. The Tenant

disputed the 10 Day Notice March 10, 2020, past the deadline for disputing the Notice. In the circumstances, I find the Tenant did not dispute the Notice.

The Tenant submitted that the Notice was withdrawn or cancelled. I am not satisfied it was. The Agent denied that the Notice was withdrawn or cancelled. I would expect the Tenant to have documentary evidence of the Notice being withdrawn or cancelled given the importance of this issue in a tenancy. I acknowledge that the Landlord waited one month and 15 days after the effective date of the notice to file the Application seeking to enforce the Notice. I do not find this to be a particularly long time. Further, the Landlord accepted rent from the Tenant but issued receipts showing the rent was for "use and occupancy only" which should have alerted the Tenant to the fact that the Landlord was not reinstating the tenancy. In the circumstances, I am not satisfied the Landlord expressly or implicitly withdrew, waived or cancelled the Notice.

Given the Tenant did not dispute the Notice as required, pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended March 31, 2020, the effective date of the Notice. The Tenant was required to vacate the rental unit by March 31, 2020.

The Landlord is entitled to an Order of Possession. I issue the Landlord an Order of Possession effective at 1:00 p.m. on July 31, 2020 pursuant to section 55(2)(b) of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on July 31, 2020. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court
SUBJECT TO THE MINISTERIAL ORDER M089 REFERRED TO ON THE LAST PAGE OF THIS DECISION.

The request for the filing fee is withdraw.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 11, 2020

Residential Tenancy Branch