



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eastern Sun Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

The landlord filed an Application for Dispute Resolution on July 14, 2020 seeking an Order of Possession for the rental unit, as well as recovery of the filing fee for the hearing process. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on August 20, 2020. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and an agent of the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. Additionally, the agent of the landlord brought witnesses to attend and speak to the matter at hand.

The tenant confirmed receipt of the notice of this hearing as well as the documentary evidence presented by the landlord. The landlord submitted a photo of the notice taped to the door of the rental unit. The tenant did not submit documentary evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The agent of the landlord gave the summary information of the tenancy agreement in place. The tenancy started on July 7, 2018. Both parties signed the agreement on June 12, 2018. Rent was \$795 dollars per month, and the tenant paid an initial security deposit off \$387.50. The tenant confirmed these details in the hearing.

The landlord issued a 'One Month Notice to End Tenancy for Cause' (the "One Month Notice") on April 13, 2020. This gives the move-out date for the tenant to vacate on June 1, 2020. The landlord indicated on the document that it was attached to the door of the rental unit where the tenant resides.

On page 2, the landlord provided the following reasons for issuing the One Month Notice:

- tenant has allowed an unreasonable number of occupants in the unit/site/property/park
- tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant of 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 or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not correct within a reasonable time after written notice to do so
- tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

On page 3, the landlord provides details:

- they receive many complaints "from multiple other tenants" that others are allowed into the building;
- this is against instructions to all tenants "to not allow guests into their suites" to practice social distancing and other COVID-19-related precautionary measures;

In a single document, the landlord submitted a series of statements from other tenants living in the building. These attest to the conduct of the tenant. There are 5 statements, providing as follows:

- the property manager received numerous complaints about the visitors' conduct and illegal conduct;
- the property manager told the tenant "at least 7 times" that the dangerous behaviour must stop;
- a tenant referred to "street people overnight" who stayed in the building;
- a tenant, acting as the assistant manager, gave a list of dates, which include an incident of overdose, another person living in the unit, and drug trafficking and use;
- a tenant opened a file with the RCMP and received notice from other tenants that they are scared of individuals entering the unit.

In the hearing, the four witnesses provided testimony on what they observed and discussions they had with the property managers, and what the RCMP replied to them from an investigation. One tenant stated they were worried about children and others in the building and surrounding area.

The agent of the landlord also spoke to the matter of subletting. Witnesses informed the property manager that people were staying in the suite "for days on end". This leaves an unreasonable number of people in the suite.

The tenant did not submit documentary material for this hearing. They acknowledged receipt of the Notice, though could not confirm the specific date.

They acknowledged the reasons for the issuance of the Notice. They stated they are trying to help people, in line with the higher goals of a benevolent agency. They felt that they were being persecuted because of their race and because of their addiction. There are other drug users in the building that the tenant feels are also responsible for what is happening. They reiterated that they help people, and this damages their reputation.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, one or more of the reasons in that section applies.

The Ministerial Order dated No. M089, dated March 30, 2020 prevents a landlord issuing a notice to end tenancy under section 47. This was updated by Ministerial Order M195, dated

June 24, 2020, which then authorized a landlord to issue a notice to end tenancy after June 24, 2020.

In this matter, the notice the landlord issued on April 13, 2020 falls past the effective date of emergency measures enacted by the branch on March 30, 2020. The One Month Notice pre-dates the effective date of Ministerial Order M195. As such, the One Month Notice is not valid, and has no legal effect.

By Ministerial Order M089, the landlord did not have the authority to issue the One Month Notice under section 47 of the *Act*. The landlord's Application for an Order of Possession under section 55 of the *Act* is dismissed.

As the landlord was not successful in this application, the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

For the reasons above, I dismiss the landlord's Application for an Order of Possession, without 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 *Act*.

Dated: August 24, 2020

Residential Tenancy Branch