



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession for breach of an agreement and for cause.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing the tenant indicated that no video had been provided by the landlords, which was uploaded to the Residential Tenancy Branch automated system. One of the landlords submitted that the tenant was provided with still images instead. Where a party wishes me to consider evidence, it must be provided to the other party in accordance with the Rules of Procedure. Since the video has not been provided to the tenant, I decline to consider it.

No further issues with respect to evidence were raised and all other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession?

Background and Evidence

The first landlord (MO) testified that this fixed term tenancy began on May 1, 2020 and expires on August 31, 2020 thereafter reverting to a month-to-month tenancy and the tenant still resides in the rental unit. Rent in the amount of \$900.00 is payable on the 1st

day of each month. No rent has been paid for August, 2020, but there are no other rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite and the upper level of the home is also tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant was served with a One Month Notice to End Tenancy for Cause or End of Employment. A copy has been provided as evidence for this hearing and it is dated July 3, 2020 and contains an effective date of vacancy of August 3, 2020. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed 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 tenancy agreement specifies that no pets are allowed, however the tenancy agreement for the tenants in the upper unit permits a dog.

The tenant acquired a dog which caused disturbances to the tenants in the upper level. The dog is not permitted, and was constantly barking and aggressive toward the dog in the upper level. The tenants in the upper level have also complained about a mess in the laundry room.

On June 1, 2020 the landlords met with the tenant and a verbal discussion took place about removal of the dog, which was followed up by email. The tenant said that the dog would be gone by the end of June. However, on July 3, 2020 the dog was still there, which was seen by the landlord while there replacing a window. The landlords sent an email to the tenant that day indicating that a notice to end the tenancy would be served, which was posted to the door of the rental unit by the landlord's spouse directly after sending the email. There had been no indication by the tenant that the dog was removed. The landlord is not certain if the tenant was home on July 3, 2020 but the dog was still in the suite.

The landlords have not been served with an Application for Dispute Resolution by the tenant disputing the notice to end the tenancy.

The second landlord (HS) testified that she taped the One Month Notice to End Tenancy for Cause to the door of the tenant's rental unit on July 3, 2020.

The tenant testified that the first she received the notice to end the tenancy was by registered mail with the landlords' application, evidentiary material, and notice of this hearing. The tenant didn't know that she had to dispute it, but thought that's the reason for this hearing.

The tenant had been away, and her son stayed at the rental unit while she was away and may have received the notice to end the tenancy, but the tenant didn't see it, having arrived home on July 19, 2020.

Analysis

I have reviewed the One Month Notice to End Tenancy for Cause or End of Employment (the Notice), and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*.

Landlords cannot issue a notice to end a tenancy for repeated late rent as per the Ministerial Order with respect to COVID-19. If that were the only reason for issuing the Notice, I would be required to dismiss the landlords' application. Issuing it for breach of a material term of the tenancy agreement would also not be permitted if that material term was unpaid rent or late rent. In this case, the breach of the material term is due to the dog that the tenant permitted in the rental unit.

I have reviewed all of the evidentiary material, with the exception of the landlords' video evidence. The landlord testified that she taped the Notice to the door of the rental unit on July 3, 2020. The tenant testified that she was not in town at the time and first saw the Notice in the landlords' evidence and hearing package, but her son may have taken it off the door. I accept that it was served by posting it to the door of the rental unit on July 3, 2020, which is deemed to have been served 3 days later, or July 6, 2020.

The *Act* also specifies that a tenant has 10 days from the date of service, or deemed service, to dispute a One Month Notice to End Tenancy for Cause. If the tenant does not do so, the tenant is conclusively presumed to have accepted the end of the tenancy. The tenant did not dispute it, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and I grant an Order of Possession in favour of the landlords.

Incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the law. Given that rent is payable on the 1st day of each month and the Notice is deemed to have been served on July 6, 2020, I find that

the effective date of vacancy is changed to August 31, 2020. Therefore, I grant the Order of Possession effective at 1:00 p.m. on August 31, 2020.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on August 31, 2020.

This order is final and binding and may be enforced.

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: August 24, 2020

Residential Tenancy Branch