



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The parties both attended the hearing and each gave affirmed testimony. The tenant was assisted by an Advocate, and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

The landlord's evidentiary material was provided to the tenant by email on August 15, 2020, which is not a method of service permitted by the *Residential Tenancy Act*. Therefore, I decline to consider the landlord's evidence. All evidence of the tenant has been provided to the landlord and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy For Cause or End of Employment was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began 7 years ago and the tenant still resides in the rental unit. Rent in the amount of \$950.00 is payable on the last day of each month for the following month. Presently arrears are \$50.00. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is suite in the upper level of a house, and the lower level is also tenanted. The landlord does not reside on the property, and there is no written tenancy agreement.

The landlord further testified that he personally served the tenant with a One Month Notice to End Tenancy For Cause or End of Employment on July 23, 2020. A copy has been provided for this hearing by the tenant, and it is dated July 23, 2020 and contains an effective date of vacancy of August 31, 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;
 - 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:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well0being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site/property/park.

The tenant's rent is paid partially by a government Ministry, and the tenant must pay the other \$50.00 monthly. The rent paid for April, May, June and July was \$900.00. The tenant paid \$1,150.00 in August which includes \$200.00 of arrears from April to July, but only paid \$900.00 for September.

Water leaked into the basement and the landlord called the tenant but she hung up on the landlord. The tenant said there was nothing leaking, but if the landlord could have entered, he may have noticed the leak. The tenant and occupants don't answer door or phone and take off out of town. Three days later the landlord got a call about water again, and he told the tenants in the lower level to shut the water off. A seal under the drain in the tub was broken, which took about 10 days to repair.

With respect to illegal activity, the tenant's 21 or 22 year old son has a no contact order in place for his girlfriend, and she's hiding in the house. Someone called police; aunts and uncles were looking for her which is why police got involved. The tenant told police she was in basement and gave the police the phone number of the tenants in the lower level. The police called the tenants in the basement who denied she was there and told the police the girl was upstairs. They won't answer anything; they hide.

The landlord further testified that bi-fold doors are missing or broken; the front door glass needs replacing, and now has plexi-glass which was installed by the tenant. The bathroom door jam is “booted out” and is now gone; one of the kitchen cupboard doors is broken, and the landlord had a plumber attend who took 4 feet of 2-inch pipe out that was full of grease. The tenants throw garbage out the top window, and garbage around the garage needs to be picked up. There’s probably 5 hours of hard work to do there. The tenants also burned the floor with a frying pan in the kitchen. A contractor attended and the tenant said it was normal wear and tear, but it needs to be replaced. Excessive damage is adding up.

The landlord’s witness testified that he viewed quite a bit of damage in the rental unit. The kitchen floor has burn marks which need to be re-done; a cabinet is missing a door; a few bi-fold doors are broken; a window was broken and has to be replaced; and a bad odor exists which will take some work to get rid of. The witness went to look at the window to price it around the 13th of last month.

The tenant went to a glass shop about the window and told the person there that the deck was too rotten to go onto to prevent fixing the window. The witness is a big man and had no problems. He got a ladder and measured outside, then the tenant let him in and he measured from the inside as well. The tenant wanted to have it charged to the landlord, but the owner of the glass shop refused to do so and wanted a down payment.

The tenant testified that it was her intent to pay for the broken window, but due to bushes on the deck, they said it was unsafe.

The kitchen floor has minor marks, and the tenant is willing to deal with it. The bi-fold doors contain slats which tend to come out. The last tenant also said they had trouble with them. The tenant has pretty much cleaned up all of the garbage that the landlord asked her to, taking 3 trips to the dump.

The tenant has never received a warning letter or any written notice to inspect except on August 12, 2020.

The tenant has also provided a document setting out the Details of the Dispute.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute.

A landlord is not required to prove every reason for issuing the Notice. In this case, whether or not the damages are serious enough to warrant ending a tenancy is disputed by the parties. However, the landlord testified that the tenant was late with rent for the months of April, May, June and July this year, which was paid by the tenant in August, but the tenant is still in arrears for September, 2020. A minimum of 3 late payments are required to prove repeated late rent, and the tenant has not disputed the testimony of the landlord.

Therefore, I find that the landlord had cause to issue the Notice, and I dismiss the tenant's application to cancel it.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the One Month Notice to End Tenancy For Cause or End of Employment provided by the tenant, and I find that it is in the approved form. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

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: September 08, 2020

Residential Tenancy Branch