



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPB, OPC, MNDL-S**

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- A monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by an interpreter.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the materials. Based on the testimonies of the parties I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The parties gave lengthy, rambling testimony on their antagonistic relationship

and multiple grievances regarding the other's attitude and behaviour, the majority of which is irrelevant to the matter at hand. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in October 2018, initially for a fixed-term of one year and then renewed for an additional year scheduled to end on October 1, 2020. The monthly rent is \$3,300.00 payable on the first of each month. A security deposit of \$1,650.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a basement suite in a detached home with the landlord occupying the remaining area of the building.

The landlord applies for an Order of Possession and submits that the tenancy agreement states the tenant will vacate the rental unit or site at the end of the fixed term.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated July 7, 2020 with an effective date of September 30, 2020. The 1 Month Notice was served on the tenant by registered mail. The landlord provided a valid Canada Post tracking receipt as evidence of service and the tenant testified that they had been served with the 1 Month Notice.

The tenant did not file an application to dispute the 1 Month Notice. The tenant testified that they had filed and withdrawn an application in June 2020, prior to the issuance of the 1 Month Notice and for issues unrelated to the notice. The record of the Branch shows that the tenant did file an application on June 20, 2020 seeking an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62 that was subsequently withdrawn.

A copy of the 1 Month Notice was submitted into evidence. The notice does not identify the dispute address and provides identical information for the addresses of both the landlord and the tenant. The notice is signed and dated July 7, 2020 and provides an effective date of September 30, 2020.

The reasons provided on the notice for the tenancy to end are:

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 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.*

The landlord describes the details of the cause as noise of playing from the tenant's family in the rental unit and the backyard area and use of water to fill a plastic wading pool. In addition the landlord submitted various correspondence between the parties complaining of one another's conduct.

The landlord seeks authorization to retain the security deposit for this tenancy and submits that they believe the tenants have damaged the rental unit requiring repairs and work to be done. The landlord submits in their application, "Damage caused is still unknown. Will assess after tenant vacates".

Analysis

Pursuant to section 13.1 of the Regulations and expanded upon in Residential Tenancy Policy Guideline 30 a fixed-term tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of the fixed term in circumstances where:

- the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term; or
- the tenancy agreement is a sublease agreement.

In the present circumstances neither of these circumstances apply and the written tenancy agreement does not include a clause requiring the tenant to vacate. Accordingly, I find that the landlord's application for an Order of Possession on the basis of a fixed-term tenancy agreement has no basis and dismiss this portion of the application.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application to dispute the notice they are conclusively presumed under section 47(5) of

the Act to have accepted that the tenancy ends on the effective date of the 1 Month Notice.

In the present case the tenant did not file an application for dispute resolution and they are conclusively presumed to have accepted that the tenancy ends on September 30, 2020, the effective date of the notice.

However, I find that the 1 Month Notice submitted into written evidence does not comply with the form and content requirements of section 52 of the *Act*. Most basically and fatally, the 1 Month Notice fails to identify the address of the rental unit. While the addresses of the landlord and the tenant are provided elsewhere on the document those addresses provided are identical. As I find that the 1 Month Notice does not comply with the form and content requirement of section 52 of the *Act* I decline to issue an order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord submits that they believe there is damage to the rental unit but have provided little documentary evidence or detailed submissions on the nature, scope or monetary value of the damages. As this tenancy is continuing, I find it premature for a monetary order for damages as the tenant still retains an opportunity to rectify any issues and return the rental unit in the condition it was in at the start of the tenancy. Accordingly, I dismiss this portion of the landlord's application with leave to reapply.

Conclusion

The landlords' application for a monetary award and authorization to retain the deposit for this tenancy is dismissed with leave to reapply.

The balance of the application is dismissed 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 *Residential Tenancy Act*.

Dated: September 17, 2020

Residential Tenancy Branch