



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPN

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause and because the tenants have given written notice to end the tenancy.

The landlord and one of the named tenants attended the hearing, and the tenant also represented the other named tenant.

At the commencement of the hearing it was determined that the name of the tenant who attended the hearing is incomplete, and the parties agreed that the Style of Cause be amended. The frontal page of this Decision reflects that amendment.

The parties each gave affirmed testimony and were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed 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*?
- Has the landlord established that the tenant has given written notice to end the tenancy?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 20, 2020 and the tenants still reside in the rental unit. Rent in the amount of \$1,200.00 is payable on the 1st day of each month and there are currently no rental arrears. On May 6, 2020 the landlord

collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in the lower level of the landlord's home, and the landlord resides in the upper level. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on June 26, 2020 the landlord served the tenant with a One Month Notice to End Tenancy For Cause or End of Employment (the Notice) by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated June 26, 2020 but contains no effective date of vacancy, other than: “___/July/2020.” The reason for issuing it states: “Tenant is repeatedly late paying rent.” The landlord testified that during COVID restrictions, the landlord was not concerned about late rent, but the security deposit wasn't paid until more than 30 days after the tenancy began.

The landlord further testified that today or last night, the tenant burned the documents served upon him by the landlord in front of the landlord's car.

The tenants have not served the landlord with an Application for Dispute Resolution disputing the notice and the landlord seeks an Order of Possession

The tenant testified that the other named tenant is his daughter.

The tenant received an email saying that the landlord wanted to evict. However, the tenants are not late on payments. COVID-19 shut down the tenant's business and that's why he was late on payments.

Analysis

Firstly, there is no evidence before me that the tenants gave notice to end the tenancy, and therefore, the landlord's application for an Order of Possession due to the tenants giving notice to end the tenancy cannot succeed.

The *Residential Tenancy Act* specifies that if a tenant fails to dispute a One Month Notice to End Tenancy For Cause or End of Employment within 10 days of service, the tenant is conclusively presumed to have accepted the end of the tenancy and the tenant must move out of the rental unit by the effective date contained therein. In this case, the tenants have not disputed it. The landlord has not placed an effective date in the Notice, other than “___/July/2020.” However, the *Act* also states that incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the law. Given that the tenant did not dispute in his testimony that the Notice was served on June 26, 2020, I accept the landlord's testimony that it was

served on that date, and is deemed to have been received 3 days later, or June 29, 2020. As a result, and considering that rent is payable on the 1st day of each month, I find that the correct effective date is July 31, 2020.

Although the Notice is not signed by the landlord, the conclusive presumption still applies, and since the tenants have not disputed the Notice, the landlord is entitled to an Order of Possession.

Since the effective date of vacancy of July 31, 2020 has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I order the landlord to keep that amount from the security deposit held in trust.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I order the landlord to keep \$100.00 from the security deposit held in trust as recovery of the filing fee.

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 17, 2020

Residential Tenancy Branch