



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPN, MNR, FFL

Introduction

On August 7, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession for the rental unit based on an undisputed notice to end tenancy; a monetary order for unpaid rent; and to recover the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenants attended the conference call hearing. The Tenants were assisted by an advocate.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord was granted a priority hearing due to the request for an order of possession of the rental unit based on the issuance of a One Month Notice to End Tenancy for Cause.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the issuance of a One Month Notice to End Tenancy for Cause. The Landlord's other claims are dismissed with leave to reapply.

A copy of the One Month Notice to End Tenancy for Cause dated June 30, 2020 was located in the Landlord's documentary evidence following completion of the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession based on an undisputed notice to end tenancy?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 31, 2019 and is on a month to month basis. Rent in the amount of \$1200.00 is to be paid to the Landlord by the first day of each month. The Tenants paid a security deposit of \$600.00 to the Landlord.

The Landlord testified that she issued the Tenants a One Month Notice to End Tenancy for Cause ("the One Month Notice") by posting it to the Tenant's door on June 30, 2020.

The reasons cited by the Landlord within the One Month Notice are as follows:

Tenant has allowed an unreasonable number of occupants in the unit /site

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 One Month Notice provides that the Tenants must move out of the rental unit by July 31, 2020.

The One Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: "You may be EVICTED if you do not respond to this Notice." The Notice also informs the Tenant of the right to dispute the Notice within 10 days after

receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the effective date set out on page one of the Notice.

The Tenants testified that they received the One Month Notice on June 30, 2020.

The Tenants were asked why they did not dispute the One Month Notice. The Tenants provided testimony that they attempted to dispute the One Month Notice; however, their bank card and Visa would not work. The Tenant testified that they subsequently discovered that someone had stolen money out of their bank accounts. The Tenants were asked if they applied for a fee waiver and replied that they did not pursue a fee waiver. The Tenants were asked to provide the date that they attempted to dispute the One Month Notice and the Tenant stated that he could not remember. The Tenant later stated that it was around July 13 or 14, 2020.

The Residential Tenancy Branch Rules of Procedure provide that an application is not made until the payment has been received. I find that the Tenants did not dispute the One Month Notice.

The Landlord seeks an order of possession for the rental unit, based on an undisputed One Month Notice to End Tenancy for Cause dated June 30, 2020.

Analysis

Ministerial Order M195 issued June 24, 2020, pursuant to the State of Emergency declared on March 18, 2020 provides that effective June 24, 2020 Landlords may issue all notices to end tenancy, except notices for unpaid rent and utilities that relate to affected rent.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant received a One Month Notice to End Tenancy for Cause dated June 30, 2020.

I find that the reasons cited within the One Month Notice do not relate to nonpayment of affected rent.

The One Month Notice provided the Tenant with their rights of dispute. I find that the Tenants did not dispute the One Month Notice and the opportunity to dispute the Notice has expired.

I find that the Tenants are therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on July 31, 2020, the effective date of the One Month Notice.

Section 55 of the Act provides that a Landlord may request an order of possession of a rental unit when a notice to end tenancy is given by a Landlord and the Tenant has not disputed the Notice and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two (2) days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep \$100.00 from the security deposit of \$600.00 in full satisfaction of the filing fee.

Conclusion

The Tenants did not file to dispute the One Month Notice. The Tenants are presumed under the legislation to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two (2) days, after service on the Tenants.

The Landlord has leave to reapply for the claims in the application that were severed.

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 18, 2020

Residential Tenancy Branch