



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, FFL

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the original application, amendment to the application and the submitted documentary evidence via Canada Post Registered Mail on August 21, 2020.

After waiting 10 minutes past the start of the scheduled hearing time the hearing was commenced.

At the outset, the landlord stated that he no longer requires a monetary claim for unpaid rent as the tenant is now current as of the date of this hearing. As such, no further action is required for this portion of the claim.

The hearing shall proceed on the landlord's request for an order of possession and a monetary claim for \$1,600.00 for damage (\$1,500.00) and recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for unpaid rent, for damage and recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 15, 2019 on a fixed term tenancy ending on June 15, 2020 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 28, 2019. The monthly rent is \$1,400.00 payable on the 1st day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid.

The landlord stated that the tenant was served with a 1 month notice to end tenancy issued for cause dated July 23, 2020 by Canada Post Registered mail on August 21, 2020. The effective end of tenancy date of the notice is August 23, 2020. The landlord selected 6 reasons for cause are:

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.

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 well-being of another occupant.

- jeopardize a lawful right or interest of another occupant or the landlord.

Tenant has not done required repairs of damage to the unit/site/property/park.

The details of cause state:

I have to remind M. to pay is rent on time every month.

He smokes inside unit I'm continuously exposed to 2nd hand smoked odors in my unit.

July rent was due 15th he has paid \$725 only.
[reproduced as written]

The landlord was advised that as the notice dated July 23, 2020 was served via Canada Post Registered Mail on August 23, 2020, the landlord's effective end of tenancy date is corrected to September 30, 2020. The landlord stated that he agreed and understood.

The landlord stated that the tenant was repeatedly late paying the rent for the entire time since the tenancy began on June 15, 2019. However, the landlord was not able to provide sufficient particulars of when the tenant was late paying rent. The landlord stated that rent was paid late in April 2020 but was not able to state when the rent was paid. The landlord made repeated referrals to text message conversations with the tenant but was unable to clarify or provide the dates on which the tenant was late paying rent for any particular month.

The landlord stated that the tenant is smoking inside the rental unit which causes the landlord issues with his asthma, however, the landlord confirmed in his direct testimony that there are no conditions in the tenancy agreement prohibiting smoking.

The landlord stated that the tenant is engaged in illegal activity by dismantling a fixed bar in the rental unit.

The landlord stated that the tenant has not done the required repairs of damage to the rental by reinstalling the fixed bar. The landlord stated that the tenant was notified verbally in March of 2020 to re-install the bar, however the landlord did not notify the tenant until the 1 month notice dated July 23, 2020 served on the tenant on August 21, 2020 via Canada Post Registered Mail that the tenancy was in jeopardy if he failed to comply.

The landlord also seeks a monetary claim of \$1,500.00 which consists of estimated damages to the rental unit. The landlord stated that he is a part time handy man and came up with an estimate for damages. The landlord was unable to provide any details of the estimate or the details of the damage(s) only that a friend who is a contractor told him that it would cost between \$1,200.00 - \$1,500.00.

Analysis

Section 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

In this case, the landlord provided undisputed affirmed testimony that the tenant was repeatedly late paying rent since the start of the tenancy. However, the landlord failed to provide any supporting evidence of repeatedly late payments of rent. The landlord was only able to state that the tenant was late paying rent for April 2020 which was paid on April 17, 2020.

Residential Tenancy Branch Policy Guideline #38, Repeated Late Payment of Rent states in part,

The Residential Tenancy Act¹ and the Manufactured Home Park Tenancy Act² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

In this case, I find that the landlord has failed to provide sufficient evidence of the tenant repeatedly late paying rent. The Act requires a sufficient number of Three late payments to justify a notice to end tenancy. In this case, the landlord provided verbal testimony of one. As such, this portion of the landlord’s claim is dismissed.

I also note for the record that under current legislation pursuant to Ministerial Order No. M195, Emergency Program Act, that any “affected rent” due during the state of emergency, a landlord must not give a notice to end tenancy under section 47 of the Act for one or more payments of the affected rent are late.

On the landlord’s 2nd, 3rd, 4th and 5th reasons for cause, I find that the landlord has failed. The landlord stated for the 2nd reason for cause that the tenant smokes in the

rental causing issues with his asthma, however the landlord confirmed that there are no provisions in his tenancy agreement for “no smoking”. The landlord also stated that the 3rd, 4th and 5th reasons for cause is for the tenant dismantling a fixed bar in the rental. The landlord was advised that Residential Tenancy Branch Policy Guideline #33, Illegal Activities states in part,

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act provide that a landlord may terminate a tenancy for illegal activity that meets one or more of the following requirements:

- *has caused or is likely to cause damage to the landlord's property*
- *has adversely affected or likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant of the residential property*
- *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.¹*

This Guideline is intended to clarify relevant issues such as the meaning of "illegal", what may constitute "illegal activity" and circumstances under which termination of the should be considered.

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere consumption of the drug would not meet the test of an illegal activity which would justify termination of the tenancy...

...Breaches of criminal statutes, if minor or technical, may not rise to the level of illegal activity under the Legislation. However, more serious breaches of the same statute may rise to that level. For example, a failure to obtain a business license to work at home, so long as this would otherwise not contravene the tenancy agreement, would not be an illegal activity warranting termination of the tenancy. On the other hand, running a brothel in the rental unit would be an illegal activity warranting termination of the tenancy.

As such, in this case, the landlord's claim that the tenant dismantled a fixed bar in the rental unit does not constitute an illegal activity. This portion of the landlord's application is dismissed.

The landlord claims that the tenant has not done required repairs of damage to the unit, site or property by reinstalling the fixed bar. On this claim, I find that the landlord has failed. The landlord stated that the tenant was notified verbally in March 2020 to reinstall the fixed bar, however the landlord did not notify the tenant that failing to do so would impact and end his tenancy until the 1 month notice dated July 23, 2020 which was served on the tenant via Canada Post Registered Mail on August 21, 2020. On this basis, I find that this reason for cause is dismissed.

The landlord also seeks a monetary claim of \$1,500.00 for estimated damage(s), however the landlord failed to provide any supporting details of the monetary claim or the particulars of the damage(s). The landlord stated that he made the estimate based on his experience as a part time handy man and an estimate obtained from a friend who is a contractor, however no details were provided by the landlord for the damage(s) or the estimate of \$1,500.00. On this basis, I find that the landlord's claim is pre-mature as no details have been submitted and is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Conclusion

The landlord's entire application is dismissed.

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: October 05, 2020

Residential Tenancy Branch