



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the landlords seeking an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The named landlord attended the hearing, gave affirmed testimony and represented the landlord company. The landlord also called 1 witness who gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) by registered mail on September 11, 2020, and the evidence by registered mail on September 15, 2020. The landlords have provided copies of 2 Registered Domestic Customer Receipts addressed to the tenant, but neither contain any dates. The landlords were given the opportunity to provide evidence of the dates after the hearing had concluded. I now have 2 Canada Post cash register receipts dated September 11, 2020 and September 15, 2020, both containing a tracking number as well as copies of the Registered Domestic Customer Receipts addressed to the tenant and containing the same tracking numbers, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issues to be Decided

Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$1,100.00 was originally

payable on the 1st day of each month which was increased effective May 1, 2019 to \$1,128.00 per month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$550.00 as well as a pet damage deposit in the amount of \$550.00, both of which are still held in trust by the landlords. The rental unit is an apartment in a complex containing 36 units on 3 floors.

The landlord further testified that the tenant was served with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated July 27, 2020 and contains an effective date of vacancy of August 27, 2020. The reasons for issuing it state:

- 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;
- 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;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The tenant has not served the landlords with an Application for Dispute Resolution disputing the Notice, and the landlords seek an Order of Possession.

The landlord's witness testified that he is the caretaker of the apartment complex and created and served the One Month Notice to End Tenancy for Cause. It was served on July 27, 2020 by posting it to the door of the rental unit. Although it appears that some of the reasons may have been crossed out on the form, the witness testified that none of the check-marks were crossed off, but he may have had some difficulty with his pen not writing smoothly.

The tenant has not served the witness with an Application for Dispute Resolution disputing the notice, and the witness has been assaulted by the tenant. Other tenants also fear the tenant.

Analysis

The *Residential Tenancy Act* specifies that once served with a One Month Notice to End Tenancy for Cause (the Notice), the tenant has 10 days to dispute it by filing and serving the landlord with an Application for Dispute Resolution. If the tenant fails to do so, the

tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date contained in the Notice.

In this case, I have reviewed the Notice, and I find that it is in the approved form. I also find that the tenant was deemed to have been served with the Notice on July 30, 2020, which is 3 days after posting it to the door of the rental unit. The landlord and the landlord's witness both testified that the tenant has not served the landlords with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an Order of Possession.

The effective date of vacancy is August 27, 2020, however the *Act* states that the effective date must be at the end of the rental period, which is August 31, 2020, and is changed to that date. Since that effective date of vacancy has passed, I grant the Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee. I order the landlords to keep that amount from the security deposit held in trust as recovery.

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 tenant.

I further order the landlord to keep \$100.00 of 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: October 23, 2020

Residential Tenancy Branch