



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT HOUSING & HEALTH
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the program coordinator for the landlord company named in this application and that she had permission to speak on its behalf at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on October 16, 2020, by way of registered mail to the rental unit where the tenant is still residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on October 21, 2020, five days after its registered mailing.

The landlord stated that the tenant was served with the landlord's second, third and fourth evidence packages on November 25, December 2 and December 9, 2020, all by posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second, third and fourth evidence packages on November 28, December 5 and December 12, 2020, three days after each of their postings.

The landlord stated that another occupant in the rental building uploaded a 48-page evidence complaint package against the tenant, to the Residential Tenancy Branch (“RTB”) website on December 14, 2020. She said that this evidence was not served to the tenant. I notified the landlord that I could not consider this evidence package at this hearing or in my decision because it was not served to the tenant, as required.

The landlord confirmed that the tenant was served with the landlord’s One Month Notice to End Tenancy for Cause, dated September 25, 2020 (“1 Month Notice”) on the same date, by way of posting to the tenant’s rental unit door. The landlord provided a signed, witnessed proof of service to confirm the above information. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s 1 Month Notice on September 28, 2020, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to correct the legal name of the landlord company. The landlord confirmed the correct legal name during the hearing. I find no prejudice to the tenant in making this amendment.

Issues to be Decided

Is the landlord entitled to an order of possession for cause based on the 1 Month Notice?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the landlord’s documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on October 15, 2019. Monthly rent in the current amount of \$1,532.50 is payable on the first day of each month. A security deposit of \$753.75 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

A copy of the 1 Month Notice was provided for this hearing. The landlord stated that the effective move-out date on the notice is November 1, 2020. The landlord claimed that the notice was issued for the following two reasons:

- *Tenant or a person permitted on the property by the 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;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord testified regarding the following facts. The landlord does not have any proof of any criminal charges or convictions against the tenant or any person permitted on the property by the tenant. The tenant breached a material term by having a barbeque on his patio, tanks in his unit, multiple noise complaints during quiet enjoyment time, and loud music all day and night, preventing other occupants from talking and sleeping. The tenant drags things around his unit, including the walls. The landlord has had multiple conversations with the tenant, who does not engage in conversation with the landlord.

Analysis

On a balance of probabilities and for the reasons stated below, I find that the landlord failed to show that it issued the 1 Month Notice for a valid reason, as required by section 47 of the *Act*.

The landlord was given ample time during the hearing to present her case. The landlord submitted a number of documents with this application but did not go through any of the documents during the hearing. The landlord did not provide any dates or a timeline of complaints.

Illegal Activity

I find that the landlord did not provide sufficient evidence of illegal activity by the tenant or any person permitted on the property by the tenant. The landlord did not provide sufficient evidence of any criminal charges or convictions, nor any police reports or police officers as witnesses to testify at this hearing. The landlord referenced having a police file number but did not provide a police report to confirm same.

Breach of a Material Term

A material term is defined in Residential Tenancy Policy Guideline 8 (my emphasis added):

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

*To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. **It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.***

*The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the **same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive.** During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true **intention of the parties in determining whether or not the clause is material.***

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;*
- that they believe the problem is a breach of a material term of the tenancy agreement;*
- **that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and***
- **that if the problem is not fixed by the deadline, the party will end the tenancy.***

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the **party alleging the breach bears the burden of proof.** A party might not be found in breach of a material term if unaware of the problem.*

The landlord did not indicate which section of the tenancy agreement the tenant breached, how it was a material term, and why it was a material term. The landlord did

not indicate what deadline was given to the tenant, whether it was a reasonable deadline, and that the tenant breached that deadline. These elements are required to be proven by the landlord at the hearing, as the 1 Month Notice was issued for the above reason by the landlord.

For the reasons stated above, I find that the landlord did not provide sufficient evidence to demonstrate that the tenant failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

1 Month Notice and Filing Fee

Section 47 of the *Act* requires the landlord to issue a 1 Month Notice for a valid reason. Despite the fact that the tenant did not appear at this hearing or provide written evidence, I find that the landlord failed to issue the 1 Month Notice for a valid reason.

Accordingly, the landlord's application for an order of possession for cause is dismissed without leave to reapply. The landlord's 1 Month Notice, dated September 25, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed without leave to reapply. The landlord's 1 Month Notice, dated September 25, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: December 29, 2020

Residential Tenancy Branch