



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPN, MNDL, MNDCL, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date by way of conference call concerning an application made by the landlords seeking an Order of Possession, a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

Both landlords attended the hearing and one 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 tenants joined the call.

The landlord testified that the tenants were individually served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package). One of the tenants was served by posting the Hearing Package to the door of the rental unit; and the other tenant was served by registered mail.

I accept the testimony of the landlord, however because the *Act* specifies certain rules for service of a hearing package when a party applies for monetary compensation, I dismiss the landlords' applications for monetary compensation with leave to reapply.

Issues to be Decided

The issue remaining to be decided is:

- have the landlords established that the notices to end the tenancy were given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 1, 2018. A copy of the tenancy agreement has been provided for this hearing, which names only 1 tenant. Rent in the amount of \$900.00 was payable on the 1st day of each month, which was increased to \$925.00 effective December 1, 2020. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a condominium apartment, and the landlords do not reside on the property.

The landlord further testified that the tenant named in the tenancy agreement called the landlords stating that he wanted to end the tenancy and the parties agreed to meet at the rental unit on October 17, 2020. At that time, the tenant advised that he had vacated on June 30, 2020, but kept paying rent to October, 2020, leaving an occupant in the rental unit. No rent has been paid since and the tenant is in arrears of rent the sum of \$2,775.00 for November and December, 2020 and January, 2021.

On October 21, 2020 the landlords served the tenants with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is not dated but is signed by a landlord, and contains an effective date of vacancy of November 18, 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;
- Tenant has not done required repairs of damage to the unit/site/property park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

Another reason has been hand-written into the Notice stating:

- Tenant has given Notice to End Tenancy & vacated – occupant has not.

On November 2, 2020 the landlords served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated November 2, 2020 and contains an effective date of vacancy of November 11, 2020 for unpaid rent in the amount of \$925.00 that was due on November 1, 2020.

The tenants have not served the landlords with an Application for Dispute Resolution disputing either of the notices to end the tenancy, and the landlords seek an Order of Possession.

Analysis

Firstly, in the case of co-tenants, where 1 tenant ends the tenancy, the tenancy ends for all tenants.

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full, in which case the notice is of no effect, or to dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

Further, the *Act* specifies that once served with a One Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute it by filing and serving the landlord with an Application for Dispute Resolution, and if the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the landlord testified that the tenants have not served the landlords with an Application for Dispute Resolution disputing either of the notices to end the tenancy given by the landlords, and I have no such application before me. I find that the tenants have not disputed any of the notices to end the tenancy, and therefore I find that the tenants are conclusively presumed to have accepted the end of the tenancy, and the landlords are entitled to an Order of Possession.

Since the effective date of vacancy contained in the notices have passed, I grant the Order of Possession effective on 2 days notice to the tenants.

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

Conclusion

For the reasons set out above, the landlords' application for a monetary order for damage to the rental unit or property is hereby dismissed with leave to reapply.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I hereby order that the landlords 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: January 04, 2021

Residential Tenancy Branch