



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL

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 landlord seeking an Order of Possession for cause and for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement.

An agent for the landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. 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's agent testified that the tenant was served with the Application for Dispute Resolution, notice of this hearing and all evidence by registered mail on November 4, 2020, which was refused by the tenant. The landlord has provided a photograph of the envelope containing the registered mail markings and the date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issues to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for Strata fines?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 1, 2018 expiring on September 30, 2019 and then reverting to a month-to-month tenancy, and

the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the 6th floor of the building, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that she was present when another person served the tenant with a One Month Notice to End Tenancy For Cause (the Notice) by attaching it to the door of the rental unit on October 8, 2020. A copy has been provided for this hearing, and it is dated October 7, 2020 and contains an effective date of vacancy of November 7, 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;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice.

The landlord has also provided a Monetary Order Worksheet setting out the following claims, totaling \$1,300.00, which are all fines imposed by the Strata:

- \$100.00 for smoking;
- \$600.00 for smoking on the balcony (x 3);
- \$200.00 for noise; and
- \$400.00 for smoking.

Copies of letters from the Strata have been provided for this hearing.

Further, the tenant is in arrears of rent the sum of \$4,500.00 for June, 2020, during the COVID-19 regulations and has not paid any rent for December, 2020 or January, 2021. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It is dated December 2, 2020 and contains an effective date of vacancy of December 15, 2020 for unpaid rent in the amount of \$1,500.00 that was due on December 1, 2020.

Also, since the date of filing, the Strata has imposed more fines, and the landlord has provided a second Monetary Order Worksheet setting out the following claims, totaling \$1,900.00:

- \$400.00 for smoking fines; and
- \$1,500.00 for unpaid rent for December, 2020.

In July, 2020 the landlord wrote a letter to the tenant outlining all of the fines. The landlord paid the first fine, and the tenant said he wouldn't do it again, however fines continue to be issued against the owner's property.

The landlord has also made an Application for Dispute Resolution by way of the Direct Request process which has not yet been processed and the landlord has not yet received a Decision. That application is with respect to the unpaid rent for June and December, 2020, however the unpaid rent for January, 2021 is not included in that Application, and the landlord seeks a monetary order in this Application.

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.

In this case, the landlord's agent testified that the landlord has not been served with an Application for Dispute resolution by the tenant, and I have no such application before me. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession.

The *Act* also specifies that the Notice must be served before the day rent is payable under the tenancy agreement and must be effective at the end of the following period, and that incorrect effective dates are changed to the nearest date that complies with the law, which I find is November 30, 2020. Since that date has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

With respect to the landlord's monetary claim, I have reviewed the evidentiary material and I accept the undisputed testimony of the landlord's agent that the tenant has managed to accumulate \$1,700.00 in Strata fines, and that the fines are levied against the property of the owner. However, I advised the landlord that I would be viewing the

Application made by way of the Direct Request process, and I note that the monetary claim in that file is \$1,500.00 for December's rent and \$1,500.00 for June's rent. It also claims Strata fines in the amount of \$1,700.00. The Direct Request process is not meant for any claims by a landlord other than unpaid rent, and therefore, I am quite confident that the landlord will not be unjustly rewarded for Strata fines. I find that the landlord has established the claim of \$1,700.00 as against the tenant.

With respect to the landlord's claim of \$1,500.00 for unpaid rent, the Direct Request application is still pending and claims only the unpaid rent for June, 2020 and December, 2020, but no claim has been made in that application for January's rent. I accept that, and I find that the landlord has established the claim of \$1,500.00 for January's rent, and I leave it to the Direct Request process to deal with the unpaid rent for June and December, 2020.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

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 grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,300.00.

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 05, 2021

Residential Tenancy Branch