



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession for cause and for breach of an agreement.

The individually named 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 testified that the tenant was served with the Application for Dispute Resolution, notice of this hearing and evidence (the Hearing Package) by registered mail on October 31, 2020 and has provided a copy of a Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this fixed-term tenancy began on April 1, 2020 and expired on July 1, 2020. The tenancy agreement, a copy of which has been provided for this hearing states that at the end of the fixed term, the tenant must vacate the rental unit. The landlord believes the tenant may have moved out last weekend but has not provided a forwarding address.

The rental unit is a suite in the lower level of a house, and the upper level is also tenanted. Rent in the amount of \$1,000.00 is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The tenant is currently in arrears of rent the sum of \$2,000.00 for the months of December 2020 and January 2021.

The landlord further testified that on September 18, 2020 the tenant was served with a One Month Notice to End Tenancy For Cause (the Notice) by registered mail, and a copy has been provided as evidence for this hearing. It is dated September 17, 2020 and contains an effective date of vacancy of October 24, 2020. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- 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;
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The landlords have also provided a copy of a Registered Domestic Customer Receipt and Canada Post cash register receipt dated September 18, 2020. The tenant has not served the landlords with an Application for Dispute Resolution disputing the Notice, and the landlords seek an Order of Possession.

Analysis

Firstly, the *Residential Tenancy Act* does not permit a term in a tenancy agreement requiring a tenant to vacate a rental unit at the end of a fixed term. Therefore, the landlords' application for an Order of Possession for breaching that agreement cannot succeed.

The *Act* also 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. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit on or before the effective date contained in the Notice.

In this case, the landlords have provided evidence of serving the tenant with the Notice by registered mail on September 18, 2020, which is deemed to have been served 5 days later, or September 23, 2020. The landlord also 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.

Because the tenancy agreement specifies that rent is payable on the 1st day of each month, the effective date in the Notice must be on the last day of the month following service. The *Act* states that incorrect effective dates contained in such a Notice are changed to the nearest date that complies with the law, which I find is October 31, 2020.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*, and the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession 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, and I order the landlords to keep that amount from the security deposit held in trust as full recovery.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenant.

I hereby order the landlords 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: January 08, 2021

Residential Tenancy Branch