



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding A. MION CONSTRUCTION LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFL, OPC, MNDL, MNDCL, OPB

Introduction

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

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- An Order of Possession for Cause pursuant to sections 47 and 55;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for damages pursuant to section 67;
- An order of possession for a breach of a vacate clause pursuant to section 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by AM ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on December 12, 2020. The tracking number for the mailing is recorded on the cover page of this decision. The tenant is deemed served with the Notice of Dispute Resolution Proceedings package on December 17, 2020, five days after mailing in accordance with sections 89 and 90 of the Act.

Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure (“Rules”) allow an arbitrator to consider whether issues are related and if they would be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. I determined the issue of seeking compensation for monetary loss or other money owed is not related to the landlord’s applications to end the tenancy and I dismissed them with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to an order of possession for a breach of a vacate clause in the tenancy agreement?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on May 1, 2020 with rent set at \$1,600.00 per month payable on the first day of each month. At the commencement of the tenancy, the landlord collected an \$800.00 security deposit which he continues to hold.

On December 19, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“notice”) by posting it to the tenant’s door. A copy of the landlord’s notice was provided as evidence. It does not provide an effective (move-out) date. The landlord testified that he must have forgotten to put an effective date in the required spot but suggested that the notice explains itself. The notice indicates the tenant failed to pay \$1,600.00 in rent, however the date the \$1,600.00 became due and payable is left blank.

The landlord testified that the tenant paid the \$1,600.00 the following day. He clarified that he doesn’t specifically remember when she paid the \$1,600.00, however it was within 5 days of serving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord clearly testified that the tenant is fully up to date in paying her rent.

The landlord provided documentary evidence and gave testimony regarding reasons to end the tenancy for cause. The landlord acknowledged he did not serve the tenant with a One Month Notice to End Tenancy for Cause. During the hearing, I advised the landlord that if the landlord seeks to end the tenancy for cause, the landlord must first

serve the tenant with a One Month Notice to End Tenancy for Cause. As the landlord has not done so, the merits of this portion of the landlord's Application for Dispute Resolution were not considered.

The landlord did not provide a copy of the tenancy agreement. No testimony was heard from the landlord to corroborate his application for a notice to end tenancy based on a vacate clause in the tenancy agreement.

Analysis

The landlord gave undisputed evidence that the tenant has paid the amount of rent stated as owing in the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within 5 days of serving it. While the landlord's application does not seek an end of the tenancy based on this notice I nonetheless find this notice has no force or effect.

The landlord has not provided sufficient evidence to satisfy me there was a vacate clause in the tenancy agreement and the landlord did not provide a copy of it for me to review. I dismiss the landlord's application for an order of possession based on the vacate clause with leave to reapply.

The landlord acknowledged that he did not serve the tenant with a One Month Notice to End Tenancy for Cause. As such, the landlord's application seeking an order of possession under section 47 of the Act is dismissed with leave to reapply once the landlord has served the tenant with one.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's application seeking an order of possession based on a vacate clause in the tenancy agreement is dismissed with leave to reapply.

The landlord's application seeking an order of possession under section 47 of the Act is dismissed with leave to reapply after the landlord serves the tenant with a One Month Notice to End Tenancy for Cause.

The landlord's application seeking monetary orders are dismissed with leave to reapply.

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: February 25, 2021

Residential Tenancy Branch