



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Surfside Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was scheduled for 11:00 a.m. on this date, via teleconference call, to deal with a landlord's application for an Ordre of Possession for cause.

The landlord subsequently submitted an Amendment to add a monetary claim and the landlord's agent as a named party, a Monetary Order worksheet, and evidence concerning damage to the property.

At the outset of the hearing, the landlord's agents appeared but the tenant was not present. Since the tenant was not present, I explored service of the hearing materials upon the tenant.

The landlord testified that the proceeding package was sent to the tenant via registered mail on March 13, 2021 and the registered mail was successfully delivered on March 16, 2021. The landlord provided the registered mail tracking number orally as proof of service.

The Amendment, Monetary Order worksheet and evidence concerning wall damage was sent to the tenant via registered mail on May 19, 2021. The landlord provided a registered mail tracking number as proof of service and the Canada Post website shows the registered mail was successfully delivered on May 25, 2021.

I was satisfied the tenant was duly served with the landlord's proceeding package and other required documentation in accordance with the Act and I proceeded to hear from the landlord's agents without the tenant's present.

As for the landlord's monetary claim, made by way of an Amendment, the landlord had requested compensation for anticipated loss of rent for June 2021 and an estimate to

rectify wall damage to the property; however, the landlord testified that rent for June 2021, which was accepted for use and occupancy only, was received. As for the landlord's request for compensation for damage to the walls, I did not permit the Application for Dispute Resolution to be amended, pursuant to Rule 4.1 of the Rules of Procedure, as I was unsatisfied that the alleged wall damage from the tenant's bike was related to the primary issue which was the request for an Order of Possession, especially when I reviewed the reasons for ending the tenancy which did not involve the tenant's bike or damage to the walls. The landlord's request for compensation or wall damage was dismissed with leave to reapply.

Rule 4.1 of the Rules of Procedure provides for amending an Application for Dispute Resolution. Amending an application to deal with unrelated matters may be dismissed. Rule 4.1 provides, in part:

An amendment may add to, alter or remove claims made in the original application.

As stated in Rule 2.3 [Related issues], unrelated claims contained in an application may be dismissed with or without leave to reapply.

Rule 2.3 and 6.2 of the Rules of Procedure provide:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

[My emphasis underlined]

I dismissed the landlord's claim for wall damage with leave to reapply; however, I encouraged the landlord to try to work with the tenant to rectify the damage or get the

tenant's agreement on compensation for damage as the tenant is still occupying the property and the landlord is holding a security deposit.

After hearing the landlord's request for an Order of Possession, I had rendered my decision orally to the landlord when the tenant connected to the teleconference call at 11:21 p.m. I asked the tenant for the reason he was late calling into the hearing to which he responded he did not have an excuse other than he was late. I informed the tenant of my decision to grant the landlord's request for an Order of Possession effective June 30, 2021 and I gave the tenant the opportunity to express any concerns or ask questions about my decision. The tenant asked what an Order of Possession was and I explained it was a legal order requiring him to vacate the rental unit by 1:00 p.m. on June 30, 2021. The tenant indicated he understood. The tenant also stated he did not agree he was responsible for all of the wall damage to which I informed the tenant that I did not hear or make a decision on the alleged wall damage and that the parties are at liberty to try to resolve that matter between themselves but if they cannot, a future hearing may be held to resolve that issue. The tenant indicated he had no other questions or concerns.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy started on August 5, 2020 for a fixed term set to expire on July 31, 2021. The tenant paid a security deposit of \$678.50 and is required to pay rent of \$1375.00 on the first day of every month.

On February 4, 2021 the building manager taped a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on the door of the rental unit. The 1 Month Notice is in the approved form and is duly completed. The stated effective date reads March 15, 2021.

The landlord testified that on March 15, 2021 the tenant wrote a letter to the landlord stated he was not disputing the 1 Month Notice and he would be vacating the rental unit on March 31, 2021.

The landlord testified that the tenant did not vacate the rental unit and continues to occupy the rental unit. The landlord received monies that the landlord accepted for use

and occupancy for the months of April 2021, May 2021 and June 2021 while awaiting this hearing.

The landlord was agreeable to an Order of Possession effective June 30, 2021 in recognition the tenant has paid for use and occupancy of the unit for the month.

Analysis

Section 55(2) provides circumstances where a landlord may request an Order of Possession. Section 55(2)(b) provides:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Upon review of the 1 Month Notice, I find I am satisfied it is in the approved form and is duly completed. Although the effective date is incorrect and should have read March 31, 2021, section 53 of the Act provides that an incorrect effective date automatically changes to comply. Accordingly, an incorrect effective date does not invalidate a Notice to End Tenancy.

Having heard the 1 Month Notice was posted to the door by the building manager on February 4, 2021, I find the tenant to be deemed served with the 1 Month Notice three days later, on February 7, 2021. A tenant has 10 days after receiving a 1 Month Notice to file an Application for Dispute Resolution to dispute it. The deadline for disputing the 1 Month Notice would have been February 17, 2021. As such, I find I am satisfied the tenant was duly served with the 1 Month Notice and he did not dispute the 1 Month Notice and the time limit for doing so has expired.

In light of the above, I find the tenancy ended on March 31, 2021 and the landlord is entitled to regain possession of the rental unit.

As requested, I provide the landlord with an Order of possession effective June 30, 2021.

I further award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution from the tenant. The landlord is authorized to deduct the \$100.00 from the tenant's security deposit to satisfy this award.

Conclusion

The landlord is provided an Order of Possession effective at 1:00 p.m. on June 30, 2021.

The landlord is authorized to deduct \$100.00 from the tenant's security deposit to recover the filing fee paid for this Application for Dispute Resolution.

The landlord's monetary claim for wall damage was 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: June 10, 2021

Residential Tenancy Branch