



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPC, 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 landlord seeking an Order of Possession for landlord's use of property; an Order of Possession for cause; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing with an agent who 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 tenant joined the call

The landlord's agent testified that the tenant was served with the application and notice of this hearing, along with all evidence, by registered mail on June 12, 2021. The landlord has provided a Canada Post cash register receipt and a Registered Domestic Customer Receipt both containing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence provided by the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on December 1, 2016 and expired on November 30, 2017, and is currently a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$1,896.25 is currently payable on the 1st day of each month and there are no rental arrears. 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 a suite in the lower ground level of the home, and the landlord resides in the upper level. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on April 18, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by posting it to the door of the rental unit, and a photograph of the Notice on a door has been provided as evidence for this hearing. A copy of the Notice has also been provided and it is dated April 18, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse); specifying "The landlord or the landlord's spouse."

The landlord needs the ground level apartment because there are stairs to both doors of the upper suite. A copy of a note from a physician has been provided for this hearing, which also indicates that the landlord requires a one level apartment for safety concerns.

The tenant was also served with a One Month Notice to End Tenancy for Cause on May 4, 2021 by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated May 4, 2021 and contains an effective date of vacancy of June 30, 2021. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant was late with rent in October, 2018; February, 2019, March, 2019 and refused to pay rent when it was due in May, 2021. The tenant did pay May's rent sometime after May 4, 2021.

The landlord called plumbers to fix the boiler, and after the repair the technician tried to call the landlord but the call was received by the tenant. The landlord would not have known if the plumber hadn't then sent an email to the landlord saying that the tenant had asked the plumber for receipts saying that he represented the landlord. The landlord's agent investigated and it appears that the landlord's calls were being re-directed. The landlord's agent called the phone company to send a technician and they changed the internet access and ensured the phone was secure.

With respect to the breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, the landlord's agent testified that the bedroom of the rental unit had a door handle only, and the tenant changed it to a key handle without giving the landlord a key in spite of being asked several times. The key has still not been supplied, and during the most recent inspection in June, 2021 the landlord was not able to enter that room.

The landlord seeks an Order of Possession and recovery of the \$100.00 filing fee from the tenant.

Analysis

Firstly, where a landlord serves a Two Month Notice to End Tenancy for Landlord's Use of Property, the tenant has 15 days from the date of service, or deemed service, 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 by the effective date contained in that Notice. In this case, I accept the testimony of the landlord's agent, and the photograph of the Notice on a door, that the tenant was served on April 18, 2021, which is deemed to have been served on April 21, 2021.

Where a tenant is served with a One Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute it, or the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate by the effective date contained in that Notice. I accept that it was served on May 4, 2021 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or May 7, 2021.

I have reviewed both Notices and I find that they are in the approved form and contain information required by the *Act*, and I accept that the landlord has established good faith.

The tenant has not served the landlord with an Application for Dispute Resolution disputing either of the Notices, 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, and the landlord is entitled to an Order of Possession. Since the effective date of vacancy contained in both Notices has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount and I order that the landlord may keep that amount from the security deposit held in trust or may otherwise recover it.

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 \$100.00 and I order that the landlord may keep that amount from the security deposit held in trust.

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: September 07, 2021

Residential Tenancy Branch