



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE KETTLE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On September 8, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession for the rental unit based on issuance of a One Month Notice to End Tenancy for Cause dated July 26, 2021 that was not disputed by the Tenant.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) and Tenant attended the conference call hearing. The Tenant was assisted by an advocate.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

The Landlord provided documentary evidence to the Residential Tenancy Branch and served a copy to the Tenant. The Tenant did not provide any documentary evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 1, 2018 and is on a month-to-month basis. Rent in the amount of \$420.00 is to be paid to the Landlord by

the first day of each month. The Tenant paid a security deposit of \$187.50. and was required to pay a pet damage deposit of \$187.50 to the Landlord. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the residential property has sixteen floors and contains 139 bachelor units.

The Landlord testified that the One Month Notice to End Tenancy for Cause ("the One Month Notice") was served to the Tenant on July 26, 2021 by posting it to the Tenant's door. The Landlord provided a proof of service document that indicates that service of the One Month Notice was witnessed on July 26, 2021.

The reasons selected by the Landlord within the One Month Notice are as follows:

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*

Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The One Month Notice provides that the Tenant must move out of the rental unit by August 31, 2021.

The One Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: "This is a legal notice that could lead to you being evicted from your home." The Notice also informs the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the effective date set out on page one of the Notice.

The Tenant testified that she was in the hospital from July 19, 2021 to September 30, 2021. The Tenant stated that she found the One Month Notice on her door on September 30, 2021. The Tenant stated that she did not dispute the One Month Notice because she has attention deficit disorder and brain damage. She stated that she did not know what was going on.

The Tenant was asked if anyone is appointed to assist her with her day-to-day affairs. The Tenant replied that she does not have anyone helping her.

The Landlord was asked if she was aware that the Tenant had been in the hospital when the One Month Notice was served, and whether she was aware that the Tenant may have a mental health condition. The Landlord testified that she is aware that the Tenant had been in the hospital around that time, but the Landlord did not know the actual dates. The Landlord stated that the Tenant is a client of the west end mental health team. The Landlord is not aware of any support person that assists the Tenant.

The Landlord testified that there were no in person conversations with the Tenant after service of the One Month Notice; however, she stated that the Tenant a letter dated September 2, 2021 reminding her that the One Month Notice was served and asking her to vacate.

The Landlord seeks to enforce the One Month Notice and wants an order of possession for the rental unit, based on the undisputed One Month Notice to End Tenancy for Cause dated July 26, 2021.

With respect to the reasons for ending the tenancy, the Landlord testified that on July 21, 2021 the Tenant was observed entering another occupant's rental unit and she removed the occupants air conditioning unit. The Landlord testified that the Tenant has also been harassing this occupant by yelling at her and banging and kicking her door. The Landlord stated that the occupant is in fear of the Tenant. The Landlord provided a copy of an incident report indicating that the Tenant was observed on video camera entering the other occupant's unit and removing the air conditioner. The occupant also reported that her new sunglasses in the unit were found to be broken.

The Landlord provided a copy of an email dated July 22, 2021 that indicates the Tenant's behavior has been escalating with non-stop noise in the hallway and banging and kicking doors.

The Landlord provided a copy of an email dated October 1, 2021 where an occupant reports that the Tenant was violently pounding on her door.

In addition, the Landlord testified that the Tenant has failed to provide a pet damage deposit that was required to be paid at the start of the tenancy. The Landlord stated that the Tenant was given numerous verbal reminders and was sent letters reminding her to pay the deposit. The Landlord stated that the Tenant agreed to make payments

but has only made payments of \$55.00 towards the deposit and owes a balance of \$132.50.

In reply to the Landlord's testimony, the Tenant stated that the pet damage deposit was paid in full by a government ministry at the start of her tenancy. The Tenant acknowledged that she received reminders from the Landlord to pay the pet damage deposit and stated that she did make some payments even though she believed the Ministry had already paid.

In reply to the allegation of theft, the Tenant confirmed that she did enter the occupant's unit and removed the air conditioner unit and placed it in the hall. She stated that the occupant was stealing her stuff and she wanted to show her how it feels. The Tenant acknowledged that she has banged and kicked the other occupant's door. The Tenant stated that she did this because she wanted to see if she was ok.

The Tenant's advocate stated that there should be an expectation on the Landlord to do more than just post a notice to end tenancy on the Tenant's door.

In reply, the Landlord stated that they do not provide occupants of the residential property with mental health support services. The Landlord stated that the Government Ministry pays for an occupants' security deposit; however, they do not pay for pet damage deposits.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I accept that the Landlord posted the One Month Notice on the Tenant's door on July 26, 2021; however, it is not reasonable to deem that the One Month Notice is considered served three days later because I find that it is more likely than not that the Tenant was in the hospital until September 30, 2021.

I find that the Tenant received the One Month Notice on September 30, 2021 and did not apply for dispute resolution to dispute it. I note that by September 30, 2021, the Landlord had already applied for dispute resolution seeking to enforce the One Month Notice.

While the Landlords application is technically premature, the Tenant did not dispute the One Month Notice and to require the Landlord to reapply would cause a couple months

delay to resolve this matter and would not change the fact that the Tenant received the One Month Notice and did not dispute it.

Despite that the Tenant did not dispute the One Month Notice and that conclusive presumption under section 47(5) of the Act could apply, the merits of the case were fully heard as if the Tenant had applied to dispute the One Month Notice.

I find that the Tenant accessed another Tenants rental unit without permission and removed their property. I also find that the Tenant has unreasonably disturbed other occupants of the residential property by yelling, banging, and kicking the other Tenant's door. I do not accept the Tenant's explanation that she was banging on the door out of concern for the occupant.

I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The tenancy is ending.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act.

At the hearing the Landlord stated that she would agree to give the Tenant extra time to find a new place to live. The Landlord agreed that any order of possession granted to her can be effective for December 31, 2021.

I grant the Landlord an order of possession for the rental unit effective December 31, 2021. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep \$100.00 from the security deposit in full satisfaction of the filing fee.

Conclusion

I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The tenancy is ending.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act. The Landlord is granted an order of possession effective at 1:00 pm on December 31, 2021, after service on the Tenant.

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: November 03, 2021

Residential Tenancy Branch