



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RG MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT
 OPC, FFL
 CNR, FFT

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenant and 1 application made by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; an order cancelling a notice to end the tenancy for unpaid rent or utilities; and to recover both filing fees from the landlord for the cost of the tenant's applications. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant.

The landlord and the tenant attended the hearing and the landlord was also assisted by an agent. The parties and the landlord's agent each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

During the course of the hearing, power had disconnected in my office, and I re-dialed into the conference call using a telephone that did not require hydro. The parties remained in attendance, and the hearing continued.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the applications before me is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated March 22, 2022 was issued in accordance with the *Residential Tenancy Act*?

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated June 16, 2022 was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 6, 2022 was issued in accordance with the *Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act* or the tenancy agreement, and more specifically the amount of pet damage deposit agreed to?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on September 1, 2021 and reverts to a month-to-month tenancy after August 31, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$1,900.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$950.00 which is still held in trust by the landlord, however the Addendum to the tenancy agreement specifies half a month's rent for a pet damage deposit but the tenant only paid \$300.00. The rental unit is the main floor of a house and a basement suite is also tenanted. The landlord does not reside on the rental property. A copy of the tenancy agreement and Addendum have been provided as evidence for this hearing.

The landlord's agent further testified that on March 23, 2022 the landlord's agent served a One Month Notice to End Tenancy for Cause by giving it to a person who apparently resides with the tenant. A copy has been provided for this hearing and it is dated March 22, 2022 and contains an effective date of vacancy of April 30, 2022. The reason for issuing it states: Tenant is repeatedly late paying rent.

The tenant paid rent on time for the months of September, October and November, 2021. However, on December 1, 2021 the tenant paid \$1,400.00 and the balance of \$500.00 on December 8. The tenant also paid \$650.00 on January 1, 2022 and \$560.00 on January 6. The landlord allowed a deduction, and the balance of \$463.10 was paid on January 12. For February, 2022 the tenant paid \$600.00 on February 1 as well as \$1,050.00 on January 31. On February 4, 2022 the tenant paid an additional \$250.00 toward February rent. March and April, 2022 rent was paid on time.

The landlord's agent further testified that the rental unit was advertised for \$2,000.00 per month but the parties negotiated \$50.00 less because the tenant agreed to maintain

the lawn. Previously, the landlord had the lawn work done. The tenant is still in arrears the sum of \$64.85.

The landlord's agent has asked the tenant on numerous occasions who lives in the rental unit but the tenant has not provided that, other than an "old guy."

The landlord's agent also testified that on June 16, 2022 the landlord's agent served the tenant with another One Month Notice to End Tenancy for Cause and a copy has been provided by the landlord. It is dated June 16, 2022 and contains an effective date of vacancy of July 31, 2022. It was given to a person who apparently lives with the tenant, who is either the tenant's father or the father of the tenant's son. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of 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;
- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The tenant has 3 cats who urinate and the landlord does not keep the litter cleaned, and the odor filters down to the basement suite. The tenant residing in the basement suite is constantly bothered by the odor. On January 12, 2022 the landlord posted a notice on the door stating that the cat litter had to be cleaned up and that the tenant in the basement suite had complained. On April 22, 2022 the landlord's agent visited the rental home and as he approached, the landlord's agent was bothered by the pungent odor. The cats had urinated outside on the deck. The landlord's agent posted another warning letter to clean it up, and that the tenant was required to keep the home in a clean condition. The landlord's agent went back in a week and the tenant had not complied, and it is still problematic. The tenant in the basement suite has given notice to end his tenancy effective at the end of July, 2022 because he can no longer live with the odor.

The Addendum to the tenancy agreement states that the tenant is to do the yard work, but has failed to do so. The landlord's agent gave the tenant notice on May 26, but the tenant didn't cut the grass until the end of June and only the back grass. The front was cut 12 days later, and still today both are growing high.

The Addendum also specifies half a month's rent for a pet damage deposit but the tenant has only paid \$300.00.

The landlord testified that there has been more difficulty with this tenant than any other tenant the landlord has had.

On April 2, 2022 the landlord gave the tenant a warning notice about the complaints of the odor from the tenant in the basement suite, by posting it to the door of the rental unit.

The property manager always wants to give the tenant a chance and on June 16 the property manager served the second notice to end the tenancy. The next day, the tenant complained to the City about the tenant in the basement suite.

On June 28 the property manager went to the rental unit again, and the next day the tenant complained to the City again about a mold problem. The City called the landlord, and the landlord had to prove it.

The landlord wants an Order of Possession, and testified that the way the tenant deals with it is unacceptable.

The tenant testified that a student had been living in the rental unit with the tenant and sent e-transfers to the landlord's account in the amount of \$650.00 in September, October, November and December, 2021. On January 1, 2022 the student stopped paying by e-transfer and gave the rent to the tenant, and the tenant gave it to the landlord.

The tenant also testified that on December 1, 2021 the tenant paid \$1,400.00, and another \$500.00 on December 8, 2021 due to the paydays of the landlord's son. The landlord did not consider the payment by the roommate and the payment on December 1.

Arrears for January, 2022 amounted to \$600.00, which was the share of the tenant's son. On February 1, 2022 the arrears were \$1,050.00 and the \$250.00 arrears were paid on the 4th. The only arrears were from the tenant's son and roommate. When the tenant's son moved out, that changed everything for the tenant and now everything is current. The tenant deducted \$64.85 because utilities were divided with the tenant in the basement suite.

In December, 2021 the tenant started to smell cannabis smoke from the tenant in the basement suite, which bothered the tenant and the tenant mentioned it to the landlord, nicely asking that the landlord talk to him. Later, the landlord started twisting the story about the tenant's cats. The cat is trained and clean. Every time the property manager arrives, there is no smell. A homeless person sleeps on the balcony and perhaps he was urinating. There were no problems until the tenant complained about the cannabis smoke.

Analysis

Firstly, a tenant must pay rent when it is due and may not make any deductions from the rent except in certain circumstances. The tenant still owes \$64.85 but has not satisfied me that the tenant had any right to deduct any rent. I have also reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 6, 2022 however no one has provided all pages of the Notice and therefore, I cannot be satisfied that it was given in the approved form. Therefore, I cancel the 10 Day Notice, however the tenant also had an obligation to provide the Notice as evidence for this hearing. Since the tenant has not done so, I decline to order that the tenant recover the filing fee from the landlord.

A minimum of 3 late payments are required to end a tenancy for repeated late rent. The tenant does not dispute that rent was paid late in December, 2021 and January, 2022 and February, 2022. It does not suffice to blame other occupants for not paying their share on time; the tenant's name is on the tenancy agreement and the tenant is responsible for ensuring that rent is paid on time.

I accept that the tenant has been repeatedly late paying rent, and it is not necessary to examine all other reasons for ending the tenancy. I have reviewed the One Month Notice to End Tenancy for Cause dated March 22, 2022 and I find that it is in the approved form and contains information required by the law. I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy contained in the Notice has passed, I grant the Order of Possession effective on 2 days notice to the tenant, and I dismiss the tenant's application to cancel it without leave to reapply. Since the tenancy is ending, I also dismiss the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I order that the landlord be permitted to keep that amount from the security deposit held in trust.

The landlord is owed \$64.85 but has not applied for a monetary order. The *Act* specifies that where I uphold a notice to end a tenancy for unpaid rent or utilities, I may grant a monetary order in favour of the landlord for the unpaid amount. However, since I am not satisfied that the 10 Day Notice was given in the approved form, I decline to order that the landlord recover that amount. If rent remains unpaid, the landlord is at liberty to make another application.

Conclusion

For the reasons set out above, the tenant's applications for an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Act* or the tenancy agreement are hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby order the landlord to keep \$100.00 from the security deposit 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: July 21, 2022

Residential Tenancy Branch