



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, MNDL-S

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause; a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

The landlord and 2 of the tenants attended the hearing, and the landlord was also represented by his daughter as agent. The landlord's agent was also accompanied by a spouse who assisted only and did not take part in the hearing. The landlord and the landlord's agent each gave affirmed testimony. Both tenants also gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The landlord's agent testified that the tenants were provided with all of the landlord's evidentiary material, which was not disputed by the tenants. However, the tenants filed evidentiary material the day before the hearing and one of the tenants advised that the landlord was provided with the evidence the same day; the landlord was not home so the package was placed in the landlord's door. The landlord submitted that no evidence was received, and the *Residential Tenancy Act* specifies that documents served in that manner are deemed to have been served 3 days later.

The tenants also advised that one of the tenants named in the landlord's application has passed away, who is the mother of one of the tenants who joined the hearing. The tenants have not been able to access the safety deposit box which contains contractual evidence and asked that the hearing be adjourned.

One of the tenants also testified that the registered mail sent to that tenant was addressed to another person and the tenant was not able to retrieve the mail.

Considering that one of the tenants was not served correctly, and considering the request of the tenants to adjourn, I dismissed the landlord's applications for monetary compensation with leave to reapply, and the hearing focused only on the application for an Order of Possession.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated November 20, 2021 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this tenancy began in 2014, however a newer tenancy agreement was signed by the parties for a fixed-term tenancy to begin on August 15, 2017 and reverting to a month-to-month tenancy after February 15, 2018. A copy has been provided for this hearing which indicates that the fixed term ends on February 15, 2017, which was an error, and should read 2018.

Rent in the amount of \$2,300.00 is payable on the 1st day of each month. The landlord collected a security deposit from the tenants in 2014 as well as a pet damage deposit, however the landlord's agent does not know the amounts. The rental unit is a single family dwelling on an acreage, and the landlord does not reside on the property.

On November 21, 2021 the landlord served the tenants with a One Month Notice to End Tenancy for Cause (the Notice) by personally handing it to one of the tenants with a witness present. A copy of a Proof of Service document has been provided for this hearing indicating that testimony and signed by the landlord and the witness. A copy of the Notice has also been provided and it is dated November 20, 2021 and contains an effective date of vacancy of December 31, 2021. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:

- put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- 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 tenants had another person living in the rental unit who has not been added to the tenancy agreement and who has been contributing to the damage to the property.

The tenants have not paid any rent for 19 months.

There is so much added junk and things on the property, and someone has been living in a shed on the property illegally which the tenants didn't tell the landlord about. The tenants cut a hole in the side of the shed and added a door. The Municipality said it had to be shut down and that it was illegal to live in. A Biohazard inspection report dated June 28, 2021 has also been provided for this hearing.

The illegal activity is living in the shed illegally; the municipality does not permit it.

With respect to extraordinary damage, the landlord relies on the Biohazard report, and the landlord's agent testified that the tenants have been hoarding.

With respect to the breach of a material term, the landlord's agent testified that the tenants were given a Caution Notice about paying rent, but a copy has not been provided for this hearing. The landlord's agent also testified that numerous inspection notices were given by the landlord but the tenants did not allow inspections.

The tenants have not served the landlord with an Application for Dispute Resolution disputing the Notice, and the landlord seeks an Order of Possession.

The landlord testified that he collected a security deposit in the amount of \$1,150.00 from the tenants in 2014 as well as a pet damage deposit in the amount of \$1,150.00.

Rent is due on the 1st of each month.

The landlord had a 32 foot trailer on the property and the tenants have filled it with their stuff. One tenant moved into the shop and cut a hole in the wall and put in a sliding glass door. The shop has a TV room and kitchenette, but it's only for a guest. It's so full of stuff now, however another person paid \$600.00 per month. The landlord told the tenants to take out the sliding glass door 9 years ago.

Six people are there and the buildings are full of stuff. The landlord had hired the tenants for 6 months to assist with the rent, but the tenants are not doing the work and rent went back to \$2,300.00.

The first tenant (GP) testified that a notice to end the tenancy was not necessary; the tenants did what was asked. The extra person moved out in November, and the tenants are working off the rent. The tenants were told to use the rent money for the payment of labor.

The parties went to Arbitration earlier, and the Arbitrator said that everyone had to agree to the contract. There was flooding before the tenancy began. All drywall had to be removed and the landlord agreed he would be there every week to pick up the debris and remove it from the property, but has not done that. Buildings were locked up because the tenants sprayed for mold, and the landlord knew that.

The contract in 2014 was for \$1,600.00 per month rent and \$700.00 for labor, so it looked like the tenants paid \$2,300.00 per month. The landlord was to put \$700.00 into a separate account. The tenants paid \$1,600.00 for rent at that time as well as the last month's rent in advance.

The shop is on a 2.3 acre property and is used as a shop and office; no one lives in it. The Municipality personnel were there and agreed that no one lived in it.

When asked why the tenant didn't dispute the notice to end the tenancy, the tenant testified that the property was cleaned up, and the person that the landlord complained about moved out. That should have taken care of it. When the tenant told the landlord that the other person left, he said that was great.

The tenants used the trailer for storage, which the landlord offered to the tenant's mother, then the landlord decided to sell it and all the items were moved into the shop.

The second tenant (TK) testified that the contract was to cover all materials and labor out of the rent, and the tenants have done that. The tenant had to completely empty the basement in order to repair floors and walls. It had to be stored dry and safe so that when renovations are done, it can go back in. The landlord was supposed to take debris away, but has given evidence of drywall under the shed.

The tenants did all the work, and the landlord wouldn't accept the tenants' calls for 7 months. The tenants put in thousands of dollars in materials.

The tenants did not know that they had to dispute the notice to end the tenancy; the other occupant moved out.

Analysis

The *Residential Tenancy Act* states that once served with a One Month Notice to End Tenancy for Cause (the Notice), the tenants have 10 days to dispute it by filing and serving the landlord with an Application for Dispute Resolution. If the tenants fail to do so, the tenants are conclusively presumed to have accepted the end of the tenancy. There is no question that the tenants did not dispute it, but didn't know they had to or believed it was no longer required by the landlord.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Since the tenants have not disputed it, I have no further discretion, except with the landlord's consent, but to find that the tenants are conclusively presumed to have accepted the end of the tenancy. The landlord has not consented to cancel the Notice, and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee. I hereby order that the landlord retain that amount from the security deposit held in trust as full recovery of the filing fee.

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 tenants.

I hereby order that the landlord may keep \$100.00 of the security deposit to cover the filing fee.

The balance of the landlord's application is hereby dismissed with leave to reapply.

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