



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from a prior hearing on August 9, 2022. I issued an interim decision setting out the reasons for the adjournment that same date (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was assisted by her son ("**JM**").

Preliminary Issue – Service

The landlord testified that she served the tenant on August 11, 2022 personally with

- 1) the Interim Decision;
- 2) the notice of reconvened hearing;
- 3) all documentary evidence submitted to the Residential Tenancy Branch (the "**RTB**"); and
- 4) the notice of dispute resolution proceeding package

She submitted a photograph of her handing documents to the tenant confirming this. Such service was in accordance with the order made in the Interim Decision.

Preliminary Issue – Request for Interpreter

At the outset of the hearing, the tenant advised me in broken English that he required a Spanish to English translator. I told him that the provision of such a translator is his responsibility and not that of the RTB. He insisted it was the landlord's responsibility. I again advised him it was not. I was uncertain if the tenant was able to understand what I was telling him. I do not speak Spanish. The landlord stated that she does not speak Spanish, and when she communicates with the tenant she does so in English. The

tenant confirmed that he did not speak either of the other languages which I or the landlord spoke (French or Portuguese respectively).

I turned to Google Translate for assistance. Using this tool, I advised the tenant that if he had someone he could call to assist him with the translation in this hearing I would stand down for 10 minutes to allow him to do so. When the tenant told me that he could not call anyone, I told him that this hearing would proceed and that he could stay on the line or disconnect from the call, but that I would not grant an adjournment on the basis that he did not arrange for a translator. The tenant confirmed that he understood this and indicated that he would stay on the line but not make any submissions.

Despite this, as the hearing continued, the tenant made submissions in broken English which I was able to understand.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is a suite located in a "fourplex". The landlord occupies one of the other suites. The two other suites are rented out to other occupants, who are not parties to this application. The landlord, the tenant, and two other co-tenants entered into a written tenancy agreement to rent the rental unit starting November 22, 2014. The two co-tenants have since vacated the rental unit. The parties disagreed as to the amount of monthly rent due. The landlord stated it was \$1,100 and the tenant stated it was \$1,150. The tenant paid the landlord a security deposit of \$410, which the landlord continues to hold in trust for the tenant.

The landlord served the tenant personally with a one month notice to end tenancy for cause (the "**Notice**") on January 29, 2022. It specified an effective date of March 1, 2022. It listed the reason for eviction as:

Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided the following details on the Notice:

Consistently noisy past midnight into early morning hours. Please have been called several times period do not stop partying after being asked by landlord/police.

The tenant confirmed that he did not dispute the Notice and that he does not have any other application currently before the RTB.

The landlord testified that the tenant would regularly have “lots of people” and many “young men” come by the rental unit to drink and play cards. She testified that they would make a great deal of noise, and stay there well into the night, often until 2 or 4:00 AM. She stated that she was unable to sleep as a result. She testified that she had called the police number of times, but that they were often unable to send anyone to deal with the issue and referred her to the RTB.

The tenant testified that when he does have parties, he does not have them at the rental unit. He testified that he and his friends go to the park or to a swimming pool instead. He also testified that he does sometimes have friends over to play cards and drink outside, but he denied that they were being unreasonably noisy.

Analysis

Section 47 of the Act deals with evictions for cause. It, in part, states:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

[...]

(3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Based on the evidence provided by the landlord, I find that the tenant was served with a copy of the Notice on January 29, 2022. Accordingly, the tenant had until February 8,

2022 (10 days later) to file an application with the RTB to dispute the Notice. He did not do this within the required time frame, or at all.

I have reviewed the Notice and find that it meets the section 52 form and content requirements.

As such, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on March 1, 2022. The tenant's failure to dispute the notice is fatal to his tenancy. As such, I have no choice but to issue an order of possession.

It is not therefore necessary for me to make any determination as to the truth of the allegations contained on the Notice. If the tenant disagreed with what was written on the Notice, he was required to have disputed the notice within 10 days of having received it.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover the filing fee from the tenant. Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this amount. She must deal with the balance of the security deposit in accordance with the Act.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within seven days of being served with a copy of this decision and attached order(s) by the landlord.

I order the landlord to provide the tenant with a copy of this decision and the attached order as soon as reasonably possible upon receiving it from

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: August 19, 2022

Residential Tenancy Branch