

Decision

Dispute Codes: OPC, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated February 21, 2011 and purporting to be effective March 31, 2011. Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The issue to be determined on the landlord's application, based on the testimony and the evidence was whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause.

Background and Evidence Notice to End Tenancy

The landlord testified that the tenancy started in 1998 and the current rent is \$332.00. The landlord testified that a One-Month Notice to End Tenancy for Cause was issued to the tenant because she had refused to pay a pet-damage deposit and breached a material term of the tenancy by permitting her daughter to move into the rental unit.

The landlord testified that the tenant was suspected of having an additional occupant and this was confirmed in the past. However, at a previous hearing, the tenant had made a commitment that she would refrain from permitting her daughter to live in the suite. The landlord stated that the tenant had not honoured this commitment and it is evident to the landlord and others in the complex that the tenant's daughter is residing with the tenant.

With regard to the pet-damage deposit, the landlord testified that the tenant has been known to have a cat living in her unit, but she denied this allegation until recently. Having verified that the tenant is keeping a pet, the landlord then made another demand for a pet-damage deposit, which the tenant refused to provide. A written communication from the tenant submitted into evidence, supported this testimony.

The landlord also stated that the tenant's daughter, as guest or occupant, had persistently caused disturbances in the complex over a long period of time and although

the tenant was repeatedly warned that the conduct of her guests would affect her tenancy, the problem has continued and escalated. The landlord submitted a substantial amount of evidence supporting this allegation. The landlord is seeking an order of possession effective March 31, 2011.

The tenant denied that her daughter was ever living with her and stated that her daughter has her own address, although she visits frequently. The tenant testified that her daughter had to be there to care for her during a recent illness. The tenant admitted that her daughter had caused problems in the past and has repeatedly bothered other residents in the complex due to a medical condition and failure to take her medication. However, according to the tenant, this will no longer be a concern as her daughter is now leaving town for a job in another community..

With regard to the pet damage deposit issue, the tenant testified that she had only recently brought the pet to live with her permanently and is now fully willing to pay a pet damage deposit, despite her earlier reluctance to do so.

The tenant pointed out that she is a long term resident and should be permitted to stay because the issues under dispute have now been resolved.

Analysis

Under section 47 of the Act, a landlord may end a tenancy by giving notice to end the tenancy for:

- a material breach of the agreement or
- failure to pay a pet damage deposit within 30 days.

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Although the landlord provided substantial evidence that the tenant or a person permitted on the residential property by the tenant had unreasonably disturbed or significantly interfered with the landlord and other residents the landlord failed to indicate this particular ground on the One-Month Notice.

At the hearing, it was evident that the 2 causes put forth by the landlord were not supported by sufficient evidence to justify granting an Order of Possession based on the stated causes. .

However, regardless of whether or not the merit of the One-Month Notice to End Tenancy for Cause was found sufficient to support a termination of the tenancy, and despite the persuasive arguments made by the tenant during the hearing, the fact is that the tenant had failed to dispute the Notice by making her own application within the statutory deadline to do so. Section 47 of the Act, states that 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.

If a tenant who has received a notice under section 47 fails to make an application for dispute resolution to dispute the Notice, 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.

In this instance, the tenant would have been required to file an application to dispute the February 21, 2011 Notice on or before March 3, 2011 to meet the statutory deadline. The tenant did not make any formal application to dispute the notice at all.

On March 3, 2011, once the five days for the tenant to dispute the Notice had lapsed, the landlord made an application for dispute resolution to obtain an Order of Possession based on the One-Month Notice

I find that, because the tenant did not make an application to dispute the One-Month Notice, I have no choice but to follow the Act by granting the landlord an Order of Possession based on this Notice.

Conclusion

Pursuant to the Act, I hereby grant the landlord an Order of Possession effective June 30, 2011 at 1:00 p.m. and the tenant is required to move out by that date. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court

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: March 2011.

Residential Tenancy Branch