



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter **DECISION**

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;

The tenant and the landlord's agent (the "landlord") 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 confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*. Both parties were given full opportunity to give affirmed testimony and present their evidence.

This tenancy has been the subject of multiple hearings as noted on the front page of this Decision.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 18, 2008 on a month-to-month basis. Currently, the tenant contributes \$510.00 towards rent and receives a rent subsidy of \$541.00 for a total economic rent of

\$1,051.00. The tenant remitted a security deposit in the amount of \$670.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The parties are engaged in an ongoing dispute over pets and the required pet deposit.

A previous Decision was rendered June 17, 2016 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. In the June 17, 2016 Decision, the Arbitrator ordered the tenant to pay a pet deposit within 30 days of receiving written consent of a pet from the landlord.

In a July 28, 2016 letter, the landlord permitted the tenant to keep a pet and demanded payment of the pet deposit no later than September 4, 2016.

The tenant forwarded a cheque for the pet deposit prior to September 4, 2016 however the landlord returned this cheque citing it was the wrong amount. The landlord then issued a 1 Month Notice to the tenant based on the grounds that the tenant did not comply with an order and that the pet deposit was not paid within 30 days.

The tenant disputed this notice and a hearing was held on December 14, 2016. The file number for the hearing and resulting Decision has also been included on the front page of this Decision. In this Decision, the Arbitrator set aside the 1 Month Notice and ordered the tenant to pay a pet deposit of \$699.00 within 30 days of receipt of the Decision.

On December 19, 2016 the tenant filed for a review of the December 14, 2016 Decision on the basis of fraud. The tenant's review application indicates she received the December 14, 2016 Decision on December 16, 2016. The reviewing Arbitrator found the tenant failed to prove the Decision was obtained by fraud and dismissed the tenant's application.

The landlord issued a letter to the tenant on December 21, 2016 demanding payment of the \$699.00 pet deposit no later than January 26, 2017.

On December 23, 2016, the tenant filed for a correction and clarification of the December 14, 2016 Decision. In a letter dated January 4, 2017, the tenant advised the landlord she would pay the pet deposit once she received a decision on her correction and clarification application.

The tenant testified she received the landlord's 1 Month Notice dated February 2, 2017 by way of registered mail on February 8, 2017. The 1 Month Notice indicates an

effective date of March 31, 2017. The grounds to end the tenancy cited in that 1 Month Notice were;

- non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order
- security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

On February 9, 2017, the tenant applied to cancel the February 2, 2017 1 Month Notice and the following day sent the landlord a cheque in the amount of \$669.00. An amended Decision was issued on February 21, 2017 correcting the amount of the pet deposit from \$699.00 to \$669.50. The landlord returned the \$669.00 cheque to the tenant as it was received beyond the 30 days.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant has not complied with an order of the director within 30 days of the date the tenant receives the order. The onus is on the landlord to prove the tenant did not comply with the order.

In the December 14, 2016 Decision, the tenant was ordered to pay a \$699.00 pet deposit within 30 Days of receipt of the Decision. Based on the tenant's review application, the tenant received the December 14, 2016 Decision on December 16, 2016. Therefore, the tenant was obligated to pay the pet deposit in the amount of \$699.00 no later than January 16, 2017.

An application for review, clarification and correction of a Decision does not suspend a Decision or Order. Although section 81(3) of the *Act* permits suspension of a Decision or Order, this is only applicable if a review hearing has been granted. In this case, the application for review was dismissed and a review hearing was not granted. The *Act* does not contain any provision for a Decision or Order to be suspended following an application for correction or clarification.

Despite the tenants attempt to pay the pet deposit in February, she was bound by the December 14, 2016 Decision and should have paid the amount set out in that Decision no later than January 16, 2017. The tenant was not authorized to withhold the pet deposit pending the outcome of the review, clarification or correction. Based on the above, I find the landlord has met her onus and dismiss the tenant's application to cancel the 1 Month Notice dated February 2, 2017.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenants' application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice dated February 2, 2017 complies in form and content. As the tenant's application has been dismissed I find that the landlord is entitled to an order of possession effective March 31, 2017 at 1:00 p.m.

Conclusion

I grant an order of possession to the landlord effective March 31, 2017 at 1:00 p.m.

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 13, 2017

Residential Tenancy Branch