



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes OPC, MNSD, FF
 MT, CNC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time than prescribed to dispute a notice to end the tenancy, for an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord.

The landlord attended the hearing and gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing personally on June 1, 2017. I accept that testimony, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Since the tenant has not attended the hearing, I dismiss the tenant's application without leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the landlord be granted an Order of Possession for cause?
- Should the landlord be permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on or about August 1, 2016, and the tenant is presently in the process of moving out. Rent in the amount of \$1,300.00 per month 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 \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant's wife moved out and the tenant has other people occupying the rental unit with the tenant, without the landlord's consent.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on April 28, 2017 by posting it to the door of the rental unit. A copy has been provided and it is dated April 28, 2017 and contains an effective date of vacancy of May 28, 2017.

Analysis

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 1 Month Notice to End Tenancy for Cause provided as evidence by both parties, and I find that it is in the approved form and contains information required by the *Act*. The landlord testified that it was served on April 28, 2017 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or ~~June~~ May 1, 2017. A landlord must serve a tenant with such a notice before the date rent is payable, which in this case is the 1st day of the month Since rent is payable on the 1st day of each month, the landlord failed to serve it prior to the date rent is payable and therefore the effective date of vacancy cannot be sooner than the last day of the following month, which is July 31, 2017, and I grant the Order of Possession effective at 1:00 p.m. on that date.

The landlord has not made a monetary claim as against the tenant and therefore I dismiss the landlord's application for an order permitting the landlord to keep all or part of the security deposit with leave to reapply. However, since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee and I order the landlord to keep \$100.00 of the \$650.00 security deposit to recover the filing fee, and I order the parties to deal with the balance of the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on July 31, 2017.

I further order the landlord to keep \$100.00 of the \$650.00 security deposit as recovery of the filing fee.

The landlord's application for an order permitting the landlord to keep the security deposit is dismissed with leave to reapply, and I order the parties to deal with the balance of the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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 19, 2017

Amended August 16, 2017

Residential Tenancy Branch