



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPL, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for landlord's use of property and a monetary order for unpaid rent or utilities.

The landlord and the landlord's spouse attended the hearing and the landlord 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 Application for Dispute Resolution and notice of this hearing on September 25, 2017 by registered mail and has provided a copy of a Canada Post cash register receipt bearing that date and a tracking number, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2016. The landlord is a tenant paying \$2,150.00 per month and is permitted to sublet, and the tenant pays \$450.00 per month for a room. At the outset of the tenancy the landlord collected a security deposit from the tenant of \$180.00 or \$185.00 but it was returned to the tenant at the tenant's request.

The landlord further testified that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by posting it to the tenant's door on June 30, 2017. A copy has been provided and it is dated June 30, 2017 and contains an effective date of vacancy of August 31, 2017. No reason has been checked off on page 2 of the notice, however the landlord testified that the copy provided as evidence for this hearing is a copy of the landlord's copy, and the one posted to the tenant's door showed that the reason for ending the tenancy is: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The landlord testified that his daughter will be moving into that room.

The tenant has not served the landlord with an application for dispute resolution disputing the notice and the landlord seeks an Order of Possession. The parties had orally agreed to end the tenancy on August 31, 2017 however the tenant has not moved out totally and has not been in the rental unit since November 23, 2017.

The landlord also testified that the tenant has fallen into arrears of rent, and paid only \$150.00 for September; \$200.00 for October; \$150.00 for November; and nothing for December, 2017. The landlord credited the tenant by collecting no rent for August, 2017. The landlord seeks a monetary order in the amount of \$1,280.00 in addition to recovery of the \$100.00 filing fee. The landlord's evidentiary material shows a calculation of rent owed for September, October and November as well as a per diem rate of \$15.00 per day for December to December 7, 2017, the date of this hearing.

Analysis

I accept the undisputed testimony of the landlord that the Two Month Notice to End Tenancy for Landlord's Use of Property was posted to the tenant's door on June 30, 2017, which is deemed to have been served 3 days later. The *Residential Tenancy Act* requires such a notice to be served before the day rent is payable. Since rent is payable on the 1st day of the month the effective date of the notice is changed to September 30, 2017.

The *Act* also states that a tenant who disputes such a notice must do so within 15 days of service or deemed service, and if the tenant doesn't do so, the tenant is conclusively presumed to have accepted the end of the tenancy. The landlord testified that the tenant has not served the landlord with an application for dispute resolution, and I have no such application before me and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. I have reviewed the notice and I find that it is in the approved form and I accept the undisputed testimony of the landlord that the copy given to the tenant contained the reason for issuing it. I find that the

landlord is entitled to an Order of Possession. Since the changed effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord that the tenant is in arrears of rent in the amount of \$300.00 for September; \$250.00 for October; \$450.00 for November and \$105.00 for December, and I grant the landlord a monetary order in the amount of \$1,105.00. I decline to order that the tenant pay full rent for December considering that the landlord will not be re-renting, but will have the landlord's daughter occupy the rental room.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,205.00.

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: December 07, 2017

Residential Tenancy Branch