



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WITMAR HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC
 OPC FFL

Introduction

This hearing was convened by way of conference call concerning an application made by 2 tenants as against an individual landlord and by a landlord company as against 1 of the tenants. The tenants have applied for an order cancelling a notice to end the tenancy for cause; and the landlord company has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The landlord company was represented at the hearing by an agent who gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord's witness is the accountant for the landlord company and did not testify under affirmation, but advised that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on October 19, 2018 and the landlord was permitted to provide proof of such service after the hearing had concluded. I have now received a Registered Domestic Customer Receipt and a Canada Post cash register receipt both bearing that date, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Since the tenants have not joined the call, the tenants' application is hereby dismissed.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on January 1, 2018 and expires on December 31, 2018 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,500.00 per month is payable on the 1st day of each month, and there are no rental arrears to the end of October, 2018, however no rent has been received for November, 2018. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing, which names only one of the tenants.

The landlord's agent further testified that the tenant was served with a One Month Notice to End Tenancy for Cause (the Notice) on September 13, 2018 by posting it to the door of the rental unit on that date, and a copy has been provided for this hearing. It is dated September 13, 2018 and contains an effective date of vacancy of October 31, 2018. The reason for issuing it states: "Tenant is repeatedly late paying rent." A Proof of Service document has also been provided for this hearing, which is signed by the person serving the Notice and a witness.

The landlord's agent testified that rent for June was received in 2 installments of \$1,000.00 on June 1, 2018 and the remaining \$500.00 on the 6th of the month. July's rent was also paid in 2 installments of \$1,400.00 on the 4th and the balance of \$100.00 on the 5th of the month. August's rent was paid in full on August 9, 2018; and September's rent was paid in installments of \$1,100.00 on the 10th and \$400.00 on the 12th of the month. Copies of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities have also been provided for this hearing.

The landlord seeks an Order of Possession and recovery of the \$100.00 filing fee.

Analysis

I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. I am also satisfied that the landlord has established 4 late payments of rent. The *Act* also 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. Having found that it is in the approved form, and having dismissed the tenants' application, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy contained in the Notice has passed, I grant the Order of Possession on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount and I order that the landlord be permitted to keep \$100.00 from the security deposit currently held in trust, or may otherwise recover it.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective 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 \$100.00 and I order that the landlord be permitted to keep that amount from the security deposit currently held in trust, or may otherwise recover it.

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: November 16, 2018

Residential Tenancy Branch