



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the owner of the rental unit that is the subject of this application.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on July 25, 2020, by way of registered mail to the tenant's rental unit address. The landlord confirmed the Canada Post tracking number verbally during the hearing. He stated that the mail was delivered on July 28, 2020. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 30, 2020, five days after its registered mailing.

The landlord stated that he served the tenant with the landlord's evidence package on August 8, 2020, by way of registered mail. The landlord confirmed the Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence package on August 13, 2020, five days after its registered mailing.

The landlord confirmed that he personally served the tenant with the landlord's 1 Month Notice to End Tenancy for Cause, dated January 24, 2020 ("1 Month Notice"), on the same date. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 1 Month Notice on January 24, 2020.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on November 15, 2019. Monthly rent in the amount of \$1,750.00 is payable on the first day of each month. A security deposit of \$875.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 1 Month Notice. He confirmed that the effective date on the notice is February 29, 2020. He stated that the notice was issued for the following two reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord testified regarding the following facts. The landlord and the occupant living above the tenant ("upstairs occupant") went to speak to the tenant in order to tell him to quiet down. The tenant was causing noise after 11:00 p.m. at the rental unit, which was disturbing the upstairs occupant. The tenant reached the "point of no return." The tenant accepted the landlord's 1 Month Notice, stated that he would leave at the end of

February 2020, said that he got sick and did not move out. He then stated that he would leave at the end of March 2020 but failed to do so. The landlord tried five times to send text messages to the tenant, but the tenant did not respond. The landlord could not do anything to evict the tenant because of the covid-19 pandemic. At the end of July 2020, the landlord spoke to the tenant and he assured the landlord he would be moving at the end of August 2020, but the landlord is unsure if he will follow through, so he wants an order of possession.

Analysis

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

I find that the landlord failed to provide sufficient evidence that the tenant “significantly” interfered with or “unreasonably” disturbed the upstairs occupant. While there may have been some issues with noise, I find that the landlord failed to meet the above standards.

I also note that the landlord did not provide any dates or specific information regarding his claims and he did not go through his documentary evidence at the hearing. He simply stated that I should look at his pages of text messages submitted, in order to determine his case but he did not point out any information or specific details. It is the landlord’s obligation as the applicant, to present his own evidence at the hearing, in order for me to make a decision about it.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord did not indicate which material term of the tenancy agreement was breached, how that term was “material” to the tenancy agreement, or when written notice was given to the tenant of this breach. I find that the landlord did not provide sufficient evidence of this claim and did not even mention it during his testimony at the hearing.

Section 47 of the *Act* requires the landlord to issue a 1 Month Notice for a valid reason. I find that the landlord failed to issue the 1 Month Notice for a valid reason, as noted above.

On a balance of probabilities and for the reasons stated above, the landlord's application for an order of possession for cause is dismissed without leave to reapply. The landlord's 1 Month Notice, dated January 24, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The landlord's 1 Month Notice, dated January 24, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: August 28, 2020

Residential Tenancy Branch