



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, OPB, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the “Act”), regulation or tenancy agreement, and to recover the filing fee for the Application.

The Landlord and the Tenant’s representative, designated through the Power of Attorney signed by the Tenant (the “Attorney”), appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

After inquiry, the Attorney confirmed that she had authority to act on behalf of the Tenant in all respects in this Application, including being familiar enough with the circumstances surrounding the Landlord’s request for an Order of Possession. It is noted that the Tenant signed and submitted the Power of Attorney, which in part, stated that “It covers only my tenancy at (rental unit address). It will represent me in dealing with any parties, especially: (Landlord’s name).”

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief, and to recover the filing fee?

Background and Evidence

I heard testimony that this month to month tenancy began in October 2006, monthly rent is \$400.00 and the Tenant paid a security deposit of \$200.00 in October 2006.

The Landlord testified and supplied evidence that the Tenant was served a 1 Month Notice to End Tenancy for Cause (the "Notice") on March 16, 2011, by posting on the door, with a stated effective move out date of April 20, 2011. Under the Act, a notice under this Section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to April 30, 2011.

Section 90 of the Act determines that a document served by posting on the door is deemed to have been served three days later. Therefore the Tenant was deemed served on March 19, 2011.

The Notice explains that the Tenant had ten days to dispute the Notice. It also explains that if the Tenant does not file an Application to Dispute the Notice within ten days, then the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The Tenant did not file an Application to dispute the Notice.

The causes as stated by the Landlord alleged the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so and significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In addition, in support of her Application, the Landlord supplied further testimony and evidence that the Tenant, among other things, changed the locks to the rental unit without the Landlord's knowledge or approval and would not change the locks back or give the Landlord a key to the rental unit. The Landlord provided written notice to the Tenant to correct this situation, that he refused and that she had to issue a notice to the Tenant to enter to have her locksmith change the locks. The Landlord supplied into evidence the tenancy agreement which, in part, stated that the tenant must not change the locks or other means of access to his rental unit, unless the landlord consents to the change. The Landlord is seeking the amount of \$78.40 for a locksmith charge.

The Landlord submitted that the Tenant has become hostile to the Landlord, accusing her of elder abuse, sending abusive emails, defaming and sending false information about the Landlord to the local newspaper and charities that the Landlord is involved in.

In response the Attorney stated the Tenant had some health issues and that the Landlord is allegedly coming into the rental unit without permission. The Attorney testified that the Landlord is unkind to the Tenant.

The Attorney stated that she would like the Landlord-Tenant relationship to return to a harmonious relationship.

Upon query, the Attorney could not supply proof that the Landlord was entering the rental unit without permission.

In response, the Landlord denied ever being unkind to the Tenant or entering the rental unit without permission.

The Landlord suggested that if an Order of Possession was granted that the effective move out date would be May 31, 2011.

Analysis

Based on the above testimony, evidence, and on a balance of probabilities, I find as follows:

The Tenant did not apply to dispute the Notice within ten (10) days of being served the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, I find the Notice is valid and that the Landlord is entitled to an order of possession effective, at the Landlord's request, **at 1:00 p.m. on May 31, 2011**, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

In the alternative, even if the Tenant had made timely application for dispute resolution, I would still grant the Landlord an Order of Possession as I find the Landlord established that the Tenant breached a material term in the tenancy agreement when he changed the locks to the rental unit, denied the Landlord access and did not supply a key to the Landlord. Further, I find that on a balance of probabilities that the Tenant, through his communications and conduct with the Landlord, significantly interfered with or unreasonably disturbed another occupant or the Landlord.

I find that the Landlord has established a total monetary claim of **\$128.40** comprised of \$78.40 for the locksmith charge and the \$50.00 fee paid by the Landlord for this application.

I allow the Landlord to withhold the amount of \$128.40 from the security deposit in satisfaction of the monetary claim.

In the alternative, I grant the Landlord a monetary order in the amount of \$128.40. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is granted an Order of Possession, has established a monetary claim of \$128.40 and is allowed to withhold the amount of \$128.40 from the security deposit in satisfaction of the monetary claim.

In the alternative, pursuant to Section 67 of the Act, the Landlord is granted a monetary Order for \$128.40.

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: April 28, 2011.

Residential Tenancy Branch