



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC, MNDC, MNSD, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on a One-Month Notice to End Tenancy for Cause dated June 27, 2011 and a monetary order for damages and loss. A prior hearing was held on the tenant's application asking that the Notice be cancelled which was not successful.

Despite being served with the application and dispute resolution documents by registered mail sent on August 10, 2011, the respondent did not appear.

Issue(s) to be Decided

The issues to be determined on the landlord's application based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause.
- Whether or not the landlord is entitled to a monetary order for damages.

The burden of proof is on the landlord.

Background and Evidence

The tenancy had originally started on November 1, 2010, and the current rent is \$2,100.00. The landlord testified that, because the tenant was not successful in obtaining an order to cancel the Notice, the landlord is now seeking to have the order enforced and wants the tenancy ended as soon as possible.

With respect to the landlord's claim for damages, the landlord testified that the tenant's conduct had resulted in a substantial number of fines levied by the strata council and the landlord was seeking reimbursement for the \$900.00 charged for the fines. The landlord testified that since the application was made, even more charges had been added as the tenant had continued to violate the strata noise bylaws. Other than the landlord's testimony, no evidence was submitted in support of the monetary claim.

Analysis

Under section 47 of the Act, a landlord may terminate the agreement by giving notice to end the tenancy for cause and I find that the landlord pursued the appropriate channel to end the tenancy under the Act. As the tenant's challenge of the Notice failed at the previous hearing, I find that the Notice is fully enforceable and I must grant the landlord an Order of Possession based on this Notice.

With respect to the landlord's claim for compensation for the fines levied by the strata Council, I find that It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Given that no evidentiary documentation was submitted to support the landlord's monetary claim, I find that all elements in the test for damages were not met, and the portion of the landlord's application relating to monetary compensation must be dismissed.

Conclusion

Based on evidence and testimony I hereby issue an Order of Possession in favour of the landlord, effective immediately after service. The order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord's monetary claim did not succeed and must be dismissed. However, I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that this amount may be retained from the tenant's security deposit.

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: September 12, 2011.

Residential Tenancy Branch