



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause; an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord withdrew his application for an Order of Possession because the tenant has breached an agreement with the landlord.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for cause?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the tenant's security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on December 18, 2014. Rent for this unit is \$650.00 per month due on the 31st of each month. The tenant paid a security deposit of \$325.00 on November 01, 2014.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause in person on December 18, 2014. This was the second One Month Notice served to the tenant. The landlord agreed to serve a second Notice because the tenant had been in hospital when the first Notice was served and the landlord gave the tenant the opportunity to exercise his rights to dispute the Notice.

The landlord testified that the second Notice has an effective date of January 30, 2015 and gave the following reasons to end the tenancy:

- 1) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk;
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (i) Damaged the landlords' property

(ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) Jeopardized a lawful right or interest of another occupant or the landlord

3) The tenant has caused extraordinary damage to the unit/site or property

4) The tenant has not done required repairs to the unit, site of property

5) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant has not to his knowledge filed an application to dispute the One Month Notice to End Tenancy within 10 days. The landlord testified that the tenant's rent is paid directly to the landlord from the Ministry. Rent for February was sent to the landlord. The landlord therefore agreed the tenant can remain in the unit until February 28, 2015. The landlord seeks an Order of Possession effective on that date.

The landlord testified that the tenant, or a person permitted on the property by the tenant, broke two windows in the unit. The tenant was asked to pay for these repairs but has failed to do so. The landlord seeks to recover the cost for the window repairs of \$300.00 and has provided a copy of the invoice from the glass company in documentary evidence.

The landlord requested an Order to keep the tenant's security deposit to cover the cost of the windows and the \$50.00 filing fee.

The tenant testified that he thought he had filed an application to dispute the Notice to End Tenancy but agreed he did not pay a filing fee or receive a file number or any paperwork from the Residential Tenancy Office. The tenant testified that he will vacate the unit on February 28, 2015.

The tenant testified that he was at home one day when about 10 men in masks came to his unit and broke the windows. The tenant testified that he went to the police to report this but is unsure if he has a file number for this incident. The tenant testified that he did not know the men who broke the window.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenant on December 18, 2014. The tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act*. The Notice indicates an effective date of January 30, 2015; however, as the landlord has accepted rent for February for the tenant's use and occupancy this date has been amended to February 28, 2015 by the landlord at the hearing. The landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

With regard to the landlord's claim for broken windows; the tenant disputed that he or a guest of the tenant was responsible for the broken windows. I find the tenant's testimony that a group of strangers came and broke the window to be less than credible as the tenant was not able to provide a police file number or any other evidence to show that persons unknown broke the windows. I find the landlord's evidence and testimony is credible and therefore on a balance of probability I uphold the landlord's claim for the window repairs of \$300.00. I Order the landlord to retain this amount from the tenant's security deposit of \$325.00 pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has merit I find the landlord may recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Window repair	\$300.00
Filing fee	\$50.00
Less security deposit	(-\$325.00)
Total amount due to the landlord	\$25.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$25.00**. The Order must be served on the Respondent. If the Respondent fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective at 1.00 p.m. on February 28, 2015. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: February 03, 2015

Residential Tenancy Branch

