



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, LRE, FF

For the landlord – OPC, MNR, MNDC, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for Cause; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for cause; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and other issues.

The hearing went ahead as scheduled; however, the tenant failed to dial into the conference call during the hearing. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application. Consequently, the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served by registered mail on June 19, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and her translator appeared; the landlord gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss with regard to damage to the rental unit?

Background and Evidence

The landlord testified through her translator that this month to month tenancy started on March 01, 2015. Rent for this unit was \$650.00 per month, due on the first day of each month. The landlord testified that this was a verbal agreement between the landlord and tenant. The tenant was made aware that there is no smoking or pets allowed on the premises.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) on May 19, 2015. A copy of the Notice has been provided in documentary evidence. The Notice informed the tenant that the landlord had the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit
- 2) 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
- 3) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

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

The landlord testified that the tenant has allowed another person to move into the rental unit when the unit was rented for single occupancy; the tenant has had many friends to the unit which has caused major disruption to other tenants; the tenant has caused disturbances to other tenants which resulted in a compliant letter being received by one of these other tenants; the tenant smokes outside the door and allows the smoke to get into another tenant's unit; a guest of the tenant was knocking loudly on her door late at night for some time and then proceeded to knock on another tenant's door. This significantly disturbed another tenant; and the tenant has kept a cat in her unit. This is a strictly none smoking and no pet unit.

Based on the above the landlord seeks an Order of Possession of the rental unit as soon as possible.

The landlord testified that the tenant has failed to pay rent for June and July, 2015. The landlord seeks to recover \$1,300.00 from the tenant and requested to be permitted to amend the application to include the unpaid rent for July as the tenant has continued to reside in the unit.

The landlord seeks compensation for damage or loss because the tenant caused damage to the gate lock, broke a lock on a window of her unit and damaged two window screens on her unit. The tenant has also left garbage outside the unit. The landlord explained that this building has three units, six people live in the unit upstairs, three people live in the unit downstairs and the tenant lives in one unit. The landlord testified that she knows the tenant caused the damage to the gate and left the garbage outside as the tenant was seen by another tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing and despite having filed an application; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

I am satisfied that the landlord served the tenant with a One Month Notice to End Tenancy for Cause (the Notice) on May 19, 2015 by posting the Notice to the tenant's door. The Notice was deemed to have been served three days later on May 22, 2015. The tenant did file an application to dispute the notice within 10 days; however, the tenant has not appeared at the hearing to provide evidence to dispute the Notice.

I am satisfied from the evidence before me that the tenant or guests of the tenant have significantly interfered with or unreasonably disturbed other tenants living in the building. I further find the tenant has been smoking outside a door which has caused smoke to disturb another tenant. While I accept that the landlord has not put in place a written tenancy agreement, I accept that the tenant was made aware that this was a non-smoking building and no pets were allowed.

Consequently, as the tenant has not disputed the landlord's evidence I find the Notice is upheld and the landlord has established a claim for an Order of Possession pursuant to s. 55 of the *Act*.

With regard to the landlord's claim for unpaid rent; I am satisfied with the landlord's undisputed evidence before me that the tenant has failed to pay rent for June and July, 2015. I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, I find the landlord is entitled to recover unpaid rent from the tenant for June, 2015 of **\$650.00**. As the landlord had issued the tenant with a One Month Notice to End Tenancy and that Notice had an effective date of June 30, 2015 I find the landlord is entitled to amend her application to include a loss of rent for July, 2015 of **\$650.00** as the tenant has continued to reside in the rental unit past the effective date of the Notice.

With regard to the landlord's claim for a Monetary Order for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am not satisfied that the landlord has met the burden of proof in this matter. The landlord testified that there are three units with at least 10 tenants residing in the units. The landlord has provided insufficient evidence to show that the tenant is responsible

for the damage to the gate or that the garbage left outside the building is the tenants. The landlord has insufficient evidence to show the actual amount required to repair the gate, the window lock, and the window screens or to remove the garbage. Consequently I must dismiss this portion of the landlord's claim.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the *Act* in the amount of **\$1,300.00**. This Order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the tenant fails to comply with the Order.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenant. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply

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: July 15, 2015

Residential Tenancy Branch

