



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC

Introduction

Both parties attended the hearing and gave sworn testimony. The One Month Notice to End Tenancy is dated September 22, 2018 to be effective October 22, 2018 and the tenant confirmed it was served personally. The effective date on the Notice is automatically corrected to November 4, 2018 pursuant to section 53 of the Residential Tenancy Act as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. Both parties confirmed that rent is payable on the 5th of each month. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated October 3, 2018 on and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in December 5, 2017 on a fixed term for one year, rent is \$1250 a month and a security deposit of \$625 was paid.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure require the landlord to provide their evidence first as the landlord has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

The landlord served a Notice to End Tenancy for the following reasons:

1. *The tenant has allowed an unreasonable number of occupants in the unit;*
2. *The tenant or a person permitted on the property by them*
 - (i) has significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - (ii) has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
 - (iii) has put the landlord's property at significant risk.*
3. *The tenant or a person permitted on the property by them has engaged in activity that has, or is likely to:*
 - (iv) damage the landlord's property;*
 - (v) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; and*
 - (vi) jeopardize a lawful right or interest of another occupant or the landlord.*
4. *The tenant has assigned or sublet the rental unit without the landlord's written consent.*

The landlord provided several emails in evidence. They complain about noise and partying by the tenant and allegedly dangerous behaviour of the tenant. The complaints are from the tenants in the neighbouring duplex and they have called the Police a few times. The tenant pointed out that the emails and complaints are all dated after the Notice to End Tenancy and these could not be the basis for the Notice. She said they were largely due to a dog dispute with the neighbour. She said the basis for the Notice was the landlord doing a home inspection and finding an oven mitt or cloth on top of the stove, some laundry piled in the laundry room and seeing her, another female, a young male and three children in the home. She explained this is a 3 bedroom home and she has family or friends as guests from time to time but they are not residing there. She said she immediately cleared the cloth or oven mitt off the stove and she keeps the house tidy. She supplied some photographs in evidence.

After discussion of the problem that the most compelling evidence for ending the tenancy was dated after the Notice to End Tenancy was issued, the landlord was very upset as he says the neighbours are a nice family and it is his duty to ensure their peaceful enjoyment is protected. At his point, the tenant volunteered the information that she was planning to leave anyway as she needs a less expensive place. The parties decided voluntarily to end the tenancy on December 1, 2018 and to an Order of Possession being issued for December 1, 2018. The tenant assured the landlord she could vacate by that date.

The landlord included in his evidence on the tenant's application a request for a monetary order for damages. I advised him that he must bring his own Application to claim damages against the tenant. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

I have considered all the evidence although only that relevant to my Decision is referenced. As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord credible but the complaints made by the neighbour are all dated subsequent to the issuance of the Notice to End Tenancy. Therefore, I find the Notice to End Tenancy dated September 22, 2018 cannot be based on those complaints. In respect to the problems found on inspection, I find the tenant corrected those problems when pointed out to her by removing items from the stove top and tidying up the laundry room; she provided photographs to illustrate how she is keeping the home now. I find the tenant's evidence credible that the persons in the home when the landlord visited were guests and were not residing in the home. The fact that the beds were used does not prove the persons were residents as I find short term guests use beds also.

However, the tenant agreed she preferred to end her tenancy and leave by December 1, 2018 and the landlord agreed that date is acceptable to end the tenancy and obtain an Order of Possession.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. Her filing fee was waived. However, pursuant to the voluntary agreement, I find the tenancy is at an end on December 1, 2018 and an Order of Possession is issued to the landlord effective December 1, 2018.

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: November 15, 2018

Residential Tenancy Branch