



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

OPC, OPB, MND, MNSD, MNDC, CNC, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for damages to the rental unit, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- A monetary order for the recovery of his filing fee, pursuant to Section 72.

The tenant applied for an order to cancel the notice to end tenancy for cause, pursuant to Section 47.

Issues to be decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to retain the security deposit in satisfaction of his claim for damages to the rental unit?

Is the landlord entitled to the recovery of the fee to file this application?

Background and Evidence

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

I find that the Notice to End Tenancy for cause, dated November 10, 2008 was served on the Tenant on November 10, 2008 by way of personal service. The landlord's

reasons for the notice are that the tenant has seriously jeopardized the health and safety of another occupant, has put the landlord's property at significant risk, has engaged in an illegal activity that has damaged the landlord's property and has breached a material term.

The landlord has submitted into evidence letters from four tenants in the building, a petition signed by seven tenants, a letter from a pest control company and photographs taken on November 6 and 14, 2008, of the inside of the rental suite. The letters contain complaints regarding the condition of the tenant's suite which encourages an infestation of cockroaches. Tenants report that the landlord has sprayed the dispute unit several times which results in the cockroaches fleeing the dispute unit and invading their apartments. Some tenants have stated that due to these unhealthy conditions, they will be forced to move out. One tenant who visited the dispute unit along with the landlord on November 14, 2008 stated in her letter that the problem is very serious and will not be resolved unless all food is removed from the apartment, as the spraying is not done in the areas that are used for food storage. A letter from a commercial pest control company dated November 15, 2008, states that the apartment needs to be cleaned prior to carrying out the treatment to eradicate cockroaches and that the problem cannot be limited unless the cupboards are emptied and the sink area is cleaned out. The photographs show that the apartment is very poorly maintained and in need of cleaning.

The landlord's witnesses stated that they had visited the suite along with the landlord and found the suite to be extremely dirty with cockroaches on the ceiling, walls, floors, cupboards and counter tops. There were dirty pots and pans on the kitchen countertops and on the stove. One pot had mouldy food in it and there was one pan inside the cupboard with rotting food in it. They also found a lot of dirt behind the refrigerator and stove. Witness 2 stated that he saw about 10-15 large cockroaches behind the appliances.

The tenant stated that she cleaned out the cupboards with the help of her witness and emptied the apartment of all the bags of clothes and unused items. Since the witness

also has medical problems and is unable to assist in moving appliances, the tenant stated that she had made arrangements for help sometime this month. The tenant also stated that she would call a cleaning company to assist her with the cleaning of the suite. The tenant stated that there were no cockroaches in her suite and that it was neat and tidy.

The tenant received a visit from an officer of the Health Department who was in the process of investigating complaints made re the unsanitary conditions of the dispute suite. In a previous hearing for dispute resolution, which took place on October 24, 2008, the tenant was ordered to have the carpet cleaned professionally and the damage on the wall fixed by November 15, 2008. The tenant had the carpet cleaned on November 05, 2008 and has provided verification of the same. She also stated that she had it redone on November 15, 2008 and has had the wall fixed. Hence, I find the tenant has complied with the orders. The tenant has considered the option of moving out and has applied for senior housing, but has not been successful so far.

The landlord testified that he last visited the suite with prior notice on November 24, 2008 and found that some effort had been made to clean but there was not much change to the condition of the suite. He stated that the floors and carpets were dirty and there were cockroaches everywhere.

The landlord has applied to claim for damages to the suite, but has not provided any evidence to support his claim. Therefore his claim for a monetary order against the security deposit is dismissed.

Analysis

Based on the sworn testimony of both parties, I make the following findings:

The tenant is physically unable to keep the suite in a sanitary condition and this has resulted in a cockroach infestation which has spread to the other suites in the building.

Efforts on the part of the landlord to curtail the spread are futile as the cockroaches continue to multiply at the source. The landlord has received numerous complaints from

the other tenants some of who are threatening to move if the problem is not resolved. The tenant was put on notice to clean the rental unit in August 2008, when she received notices to end tenancy for the same reason, but as of November 15, 2008 the unit was not clean enough for the purpose of treating it to eradicate the cockroaches. I find that the landlord has cause to end the tenancy.

The one month notice to end tenancy was served on the tenant on November 10, 2008. Pursuant to Section 53 of the *Residential Tenancy Act*, the effective date of the notice is December 31, 2008. The landlord is entitled to the return of his filing fee and may retain \$50.00 from the security deposit.

Conclusion

Pursuant to section 55(2) I am issuing a formal order of possession effective on or before 1:00pm on December 31, 2008. The Order may be filed in the Supreme Court for enforcement.

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Dated December 04, 2008.