

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, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have cause to end the tenancy? Is the landlord entitled to the filing fee?

Background and Evidence

The tenancy started on April 15, 2009. The monthly rent is \$700.00 due in advance on the first of each month. The tenant paid a security deposit of \$350.00. The rental unit is located in the basement of the home and the landlord occupies the upper level.

The landlord testified that despite signing the tenancy agreement that contained a clause stating that smoking was not permitted inside the rental unit, the tenants smoked inside and this created problems for the landlord. The smell of smoke filled her living space and caused breathing difficulties for her elderly parent. The landlord wrote several warning letters to the tenants regarding smoking inside the suite, leaving a buggy in the driveway, causing disturbances by fighting with each other and using foul language at night. On June 23, 2009 the landlord served the tenant with a 30 day notice to end tenancy. The landlord is applying for an order of possession effective September 01, 2009.

The tenant agreed that the notice to end tenancy was received on June 23, 2009 and that they were not disputing the notice. They also stated that they would move out shortly. The tenant requested a moving date of September 15, 2009.

Analysis

Based on the testimony of both parties, I find that the tenant did not dispute the notice to end tenancy and has agreed to move out. Therefore the landlord is entitled to an order of possession and pursuant to section 55(2); I am issuing a formal order of possession effective on or before 1:00p.m. on September 01, 2009. The Order may be filed in the Supreme Court for enforcement.

The landlord has proven her case and is therefore also entitled to the recovery of the filing fee. I order that the landlord retain \$50.00 of the security deposit in satisfaction of her claim.

Conclusion

I grant the landlord an order of possession effective on or before 1:00p.m. on September 01, 2009. The landlord is entitled to retain \$50.00 of the security deposit towards the recovery of the filing fee.

Dated August 25, 2009.

Dispute Resolution Officer