



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants - CNC, SS, O

For the landlord – OPC, OPB, FF (OPR)

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The landlord seeks an Order of Possession for cause, for a breach of an agreement with the landlord and the landlord has requested to amend her application to include an Order of Possession for unpaid rent. The landlord also seeks to recover the filing fee paid for this application. The tenants request the landlords One Month Notice to End Tenancy is cancelled and other issues. As the tenants have served the landlord with a notice of this hearing there is no need for their request for an Order for substitute service. I have allowed the landlord to amend her application to include an Order of Possession for unpaid rent.

Both Parties served the other party in person with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Are there arrears of rent and if so, how much?



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- Is the Landlord entitled to an Order of Possession on either of the notices or will the tenancy continue?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This tenancy started on November 01, 2009. The tenancy agreement was signed by the female tenant on October 31, 2009 and she does not recall who signed for the male tenant. Rent for this unit is \$675.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$337.50 on October 14, 2009.

The landlord claims the tenants have disturbed other tenants living next to them in this duplex. She has received complaints from other tenant's stating that the tenants have played loud music late at night and have been heard yelling, shouting and fighting late at night. The landlord testifies and has produced a copy of the tenancy agreement and addendum which state the rules do not permit disturbances of other tenants or the landlord and the tenants must observe a quiet time between 10.00 pm and 08.00 am. The neighbouring tenants have also made complaints to the landlord about the strong smell of marijuana coming from the tenant's rental unit and causing their units to smell of this illegal substance.

The landlord testifies that the tenants have a motor home parked at the property which is not insured or licensed and she has sent the tenant a letter asking this motor home to be removed. There is also a clause in the tenancy agreement which states that no uninsured vehicles are permitted to be parked at the property.

The landlord testifies that the male tenant has used a name other than his own on the rental agreement. She claims that if the tenant had used his real name she would not have rented to him due to past history of having him as a tenant. The landlord claims the tenant has acted in a fraudulent manner to get the tenancy. The landlord claims that if the tenant had used his correct name she would have discovered she had rented to him previously and run checks on him. However, this was not done because of the false name used.



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The landlord issued the tenants with a One Month Notice to End Tenancy for cause on November 24, 2009 which states the tenants have significantly interfered with or unreasonably disturbed other occupants; the tenants have seriously jeopardized the health, safety or lawful rights of other occupants or the landlord; the tenants have breached a material term of the tenancy agreement which has not been corrected with a reasonable time after the landlord has notified the tenants in writing.

The landlord has amended her application and seeks an Order of Possession for unpaid rent as the tenants have not paid rent for January, 2010 when it was due. The landlord issued the tenants with a 10 Day Notice to End Tenancy for unpaid rent on January 02, 2010. The tenants had five days to pay the rent or dispute the Notice. The tenants have not paid rent or disputed the notice. The tenants claim that they were waiting for the outcome of this hearing before they paid rent. The male tenant offered to pay the outstanding rent today.

The tenants claim that they do not make excessive noise late at night and go to bed early. They also claim they do not sleep in the bedroom next to the other duplex and sleep in the living area as it is cheaper to keep warm. The tenants also testify that they do not smoke illegal substances and the male tenant states that he is on the methadone program and is tested regularly for drug use. They do not know where the smell would be coming from.

The male tenant testifies that he does have a motor home and it was insured when they moved to the property but this has run out. They have been waiting for the outcome of this hearing to know whether to insure it for parking only or for road use.

The tenants claim that the male tenant is unable to read and as such the female tenant filled in the tenancy agreement and put the wrong surname down. She claims she put her surname as the male tenants surname as they had been together for six years. Neither tenant can recall who signed the tenancy agreement in this name. The male tenant states that as the landlord took rent money from him he did not think there was a problem.



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The landlords witness gave evidence that he moved in at the same time as these tenants and could smell dope in the area but did not know where the smell was coming from. The landlords witness testifies that he lives in another duplex next to the tenant's duplex but has not heard any loud noise from their unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. I find the landlord has the burden of proof in the matter of the One Month Notice to End Tenancy for cause to prove her allegations. In the matter of the loud noise and smell of Marijuana the landlord has provided letters from tenants living next door and a visitor to their unit concerning the noise and smell however these tenants have not been asked to appear at this hearing to testify to their statements. This means that if the landlord's evidence is contradicted by the tenants, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence in this matter.

With regard to the tenants keeping an unlicensed motor home on the property I find by the tenants own admission that the motor home is not insured or licensed and has not corrected this within a reasonable time frame after the landlord gave him written notice to do so.

I also find the tenants have used a false name on the tenancy agreement and I find it is likely that this was done with the intention to rent the unit without the landlord running checks on the male tenant or realizing at the time that she had rented to him before and had difficulties with that tenancy. I do not accept the tenant's version that she signed his name as her own because they had been together for six years. If this was the case the female tenant would have known what the tenants' real name was and should have used that instead of using her own surname.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five



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days. As the landlord served this Notice in person to the male tenant it was deemed to have been served on the same day.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended date of the Notice. As the landlord is entitled to an Order of Possession on both Notices I grant the landlord an order of possession.

As the landlord has been successful with her application she is entitled to recover the \$50.00 filing fee from the tenants.

Conclusion

The Tenant's application is dismissed.

The landlords' application for an Order of Possession is upheld. I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that the landlord retain this amount from the security deposit and of \$337.50 leaving a balance \$287.50 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: January 13, 2010.

Dispute Resolution Officer