



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, OPB, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession for cause. The landlord also seeks to recover the cost of the filing fee. The landlord has withdrawn his request for an Order of Possession for a breach of an agreement with the landlord.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 16, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on December 21, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Whether the landlord is entitled to an Order of Possession?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?



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Background and Evidence

This month to month tenancy started on May 01, 2004. Rent for this unit is \$895.00 per month and is payable in advance on the first of each month. The tenant paid a security deposit of \$377.00 on April 18, 2004.

The landlord testifies that the tenant or persons living on the property with the tenant have caused excessive noise. This has been an ongoing issue for approximately one year. Other tenants have made numerous complaints to the landlord about the high levels of noise from the tenants' rental unit. This includes slamming doors, banging, stomping around the unit, thumps, noise from what appears to be loud computer games, loud voices, loud cursing and banging on another tenants door causing stress, unreasonable disturbances and a loss of quiet enjoyment for other tenants.

The landlord has provided a copy of a breach letter he sent to the tenant about the excessive noise. This was served to the tenant on November 23, 2009. The tenant did acknowledge this letter and explained to the landlord that her son was locked in the bathroom and could not get out which resulted in him shouting and banging to get the tenants attention to let him out. The landlord served the tenant with a One Month Notice to End Tenancy for Cause dated November 30, 2009. The reasons given on this Notice are that the tenant or a person permitted on the residential property by the tenant has affected or is likely to affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord

The landlord claims that the noise levels are unacceptable and the tenant has not taken steps to correct her sons' behaviour in relation to these disturbances since being given notice to do so. The other tenants have their peace and quiet enjoyment disturbed and suffer from a lack of sleep as many of these disturbances continue late at night. The



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landlord has provided compliant letters from some of the other tenants living in close proximity to the tenants' unit. These letters detail dates and times of the disturbances.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. The landlord served the tenant with a One Month Notice on a form that is no longer in use. Section 52 of the Act says that when a landlord serves a Notice it must be on an approved form. I find that the landlord's Notice substantially complies with s. 52 of the Act and has not prejudiced the tenant. Consequently, I find that the landlord's Notice is not invalid because it is not on the currently used form. However, the landlord would be well advised to use the most current form in the future as failure to do so could prejudice a tenant if they rely on incorrect information contained in it. The tenant did not dispute the Notice within 10 days and therefore is conclusively presumed to have accepted that the tenancy will end on the date of the Notice.

I find that the landlord has provided sufficient evidence to support the One Month Notice to End Tenancy for cause. Pursuant to section 28 of the Act, each tenant has a right to quiet enjoyment and part of this includes 'freedom from unreasonable disturbance'. As a result of the loud noises coming from the tenants suite throughout the day and into the night over an extended period of at least three months I find that the tenant has violated her neighbors right to quiet enjoyment and the landlord has acted accordingly to protect another tenants rights under this section of the Act. I also find the tenant was given the opportunity to correct these unreasonable disturbances when she was served a breach letter from the landlord in November, 2009. However, the noise has continued and the other tenants have sought the landlords help to prevent this continuing in the future.



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On the basis of this, I uphold the landlords One Month Notice and grant him an Order of Possession. The landlord has agreed to extend the date on the One Month Notice to give the tenant time to find alternative accommodation. This has been extended till February 15, 2010.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on February 15, 2010. This order must be served on the Respondent 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 (\$377.00) and interest of (\$13.33) total of \$390.33 leaving a balance \$340.33 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 25, 2010.

Dispute Resolution Officer