



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants – CNC, ERP, RP, LRE

For the landlord – OPC, MNSD, MNDC, MND, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenants have requested more time to file their application to cancel the Notice to End Tenancy and they also seek to cancel the One Month Notice to End Tenancy. The tenants also seek an Order for the landlord to make emergency repairs for health or safety reasons and to make repairs to the unit, site or property. The tenants also seek an Order to suspend or set conditions on the landlords' right to enter the rental unit.

The landlord seeks an Order of Possession for cause and to recover the filing fee. During the hearing the landlord withdrew her application for a Monetary Order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and to keep the tenants security deposit.

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 make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to more time to file an application to cancel the One Month Notice to End Tenancy?
- If more time is granted, are the tenants entitled to cancel the Notice to End Tenancy?
- Are the tenants entitled to an Order for the landlord to make emergency repairs to the unit?
- Are the tenants entitled to an Order for the landlord to make repairs to the unit?
- Are the tenants entitled to an Order to suspend or set conditions on the landlords' right to enter the unit?
- Is the landlord entitled to an Order of Possession?

Background and Evidence

Both Parties agree that this month to month tenancy started on August 15, 2008. There is a written tenancy agreement in place. The tenants paid a security deposit of \$450.00 on August 05, 2008 and a pet damage deposit of \$250.00 on August 15, 2008.

The landlord testifies that the tenants were served a One Month Notice to End Tenancy on May 05, 2010 when it was posted to the tenant's door. This Notice was deemed to have been served three days after posting on May 08, 2010. This Notice gave the tenants 10 days from this date to dispute the Notice. The tenants did not file an application to dispute the Notice until June 03, 2010.

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The landlord seeks an Order of possession based on the reasons given in the Notice to End Tenancy. These reasons are as follows:

The tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonable disturbed another occupant or the landlord
- seriously jeopardized the health, safety or lawful right or another occupant or the landlord
- put the landlords property at significant risk, and

The tenant has engaged in illegal activity that has or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord
- jeopardized a lawful right or interest of another occupant or the landlord, and

The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants have requested more time to file their application to cancel the One Month Notice to End Tenancy. The tenant states that they did not file an application within 10 days as they were trying to find alternative accommodation and they had not been well.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 66(1) of the *Act* states: the director may extend a time limit established in the Act only in exceptional circumstances (my interpretation). Therefore,

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it is my decision that the tenants have been unable to demonstrate any exceptional circumstances as to why their application was filed 16 days after the 10 day deadline. The tenant attending states she was trying to find alternative accommodation and that she and her mother had not been well during this time. It is therefore my decision that the tenants' explanation does not warrant exceptional circumstances and their application for more time to cancel the Notice to End Tenancy is dismissed.

As the landlord has applied for an Order of Possession I find the One Month Notice is upheld as the tenant did not cancel it within the allowable time frame and the tenants are therefore conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice pursuant to section 47(5) of the *Act*. The effective date of the Notice was June 05, 2010; however, this did not give the tenants one clear months notice to end the tenancy and the effective date of the Notice has been amended to June 30, 2010 pursuant to section 53 of the *Act*. The landlord agreed to extend the time the tenants may vacate the rental unit until August 31, 2010. Consequently, the landlord is entitled to an Order of Possession to take effect on August 31, 2010.

As the remainder of the tenants application deals with emergency repairs, repairs and access to the rental unit these sections will also be dismissed as the tenancy will end and no orders would be effective after that date. Consequently these sections of the tenants claim are also dismissed.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord to take effect on **August 31, 2010**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.



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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, pet damage deposits and interest of \$704.17 leaving a balance \$654.17 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

The tenant's application is dismissed in its entirety, without leave to reapply.

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: July 21, 2010.

Dispute Resolution Officer