



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, FF

Introduction

This matter dealt with an application by the landlord to obtain an Order of Possession for cause and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the tenant on November 24, 2010.

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

- Is the landlord entitled to an Order of Possession?

Background and Evidence

Both parties agree that this tenancy started approximately 14 years ago. Rent for this basement unit is \$470.00 per month and is due on the 1st day of each month. The tenant paid a security deposit of \$225.00 when he first moved into the rental unit however neither party is sure of the date this was paid.

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The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on October 15, 2010 by posting the Notice to the tenants' door. The landlord states she was aware at that time that the tenant was in hospital. The reasons given on this Notice are that the tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord and the tenant has put the landlords' property at significant risk.

The landlord testifies and has provided photographic evidence that the tenants rental unit is in a terrible condition. The landlord states the tenant is a hoarder and he has not kept his unit in a sanitary or hygienic condition. The landlord also states that the tenant has dismantled his smoke alarm which could put the property at risk of a fire. The landlord states she instructed the tenant to clean the unit last summer but he has not complied with this instruction.

The tenant testifies that the landlord put the One Month Notice on his door on October 15, 2010. The tenant claims he was in hospital from September 29, 2010 to October 23, 2010. The tenant states as he did not get the Notice that was posted on his door until he returned from hospital he did not have sufficient time to dispute it.

The tenant testifies that the mess and clutter in his house was caused by a Police search. He states he was having a bad day and called 911 for help. The Police were sent and they searched his unit for firearms. The tenant states all the fire arms were registered, licensed, locked up and safe. He claims that during this search the Police created the mess shown in the landlords' photographs and normally his belongings are stacked up neatly. The tenant states that due to his disability it takes him along time to get things done but he will clean and tidy the unit again.

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The tenant recalls the landlord asking him to clean his unit in the summer and he states he did comply with her request at that time.

The landlord disputes the tenants claims she states he did not make any effort to clean his unit when she asked him to in the summer and does not believe that the Police would have caused this much mess. The landlord states that due to the level of dirt present in the unit it is clear that this has not happened over a few months. There is so much dirt it is a health hazard. The landlord also states when she visited the unit she noticed a high level of dust everywhere, the heat was running along with the fans and she states she has concerns about this causing a fire.

The tenant testifies that the smoke alarms have not been dismantled. He states he removed the battery from the smoke alarm in the bedroom as it was over sensitive but the other two smoke alarms still function.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. First of all I have considered the issue surrounding service of the One Month Notice to End Tenancy. The tenant argues that the landlord served this Notice while he was in hospital and this did not allow him sufficient time to dispute the Notice. It is my decision that the landlord did know the tenant was in hospital when she served this Notice to him which did not give the tenant a full 10 days to dispute the Notice.

While I agree the tenants unit is in an unkempt and dirty condition I must be satisfied that the landlord has acted fairly when the Notice to End Tenancy was served and the tenants' rights to dispute the Notice, if he so choose, were upheld. With this in mind I



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must find that the tenant has not given opportunity to dispute the Notice and therefore the Notice is cancelled and the tenancy may continue.

However, I would caution the tenant to be proactive in cleaning, and tidying his rental unit to ensure he maintains it to a reasonable standard of health, cleanliness and sanitary standards in order to comply with section 32 (2) of the *Residential Tenancy Act*. The tenant must ensure that all his smoke alarms are in a working condition with all batteries attached. If the tenant fails to meet this standard within two weeks of receiving this decision the landlord is at liberty to serve the tenant with another One Month Notice to End Tenancy under section 47(1)(d)(ii) (iii).

Conclusion

The landlords' application is dismissed with 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: December 07, 2010.

Dispute Resolution Officer