

## **DECISION**

**Dispute Codes:** *OPC, CNC, MNDC, MND, FF*

### **Introduction,**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for cause. The landlord also applied for a monetary order for the filing fee and for the cost incurred to restore the unit and the surrounding units that were water damaged. The tenant applied for an order to cancel the notice to end tenancy. 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 or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for the cost of repairs? Is the landlord entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on March 01, 2009. The current rent is \$910.00 per month due on the first day of each month. The tenant paid a security deposit of \$455.00. The rental unit is an apartment located in a three storey apartment complex.

On April 24, 2011, the fire alarm sounded and the sprinklers in and around the rental unit were activated. The Fire Department and Police attended and it was determined that the fire originated in the bedroom of the rental unit. The landlord filed photographs that depict the condition of the bedroom after the fire. In the photograph, on the dresser, there appears to be what looks like an ashtray with several cigarette butts.

The landlord had the fire alarm company visit to reset the alarm and the sprinkler system. A restoration company was hired to dry out the carpeting in the rental unit, the surrounding units and the hallway. The landlord has filed photographs of the damage and invoices to support her claim for the cost incurred to restore the rental unit to its former condition.

The landlord hired contractors to repair the ceiling drywall in the areas that were damaged by the sprinklers and to dry out the carpets in the surrounding units and the hallway.

To mitigate her losses, the landlord replaced the underlay and then reinstalled the original carpet. The landlord also incurred a charge from the fire system company to reset the fire alarm and replace the sprinkler heads.

The tenant agreed that she was responsible for the fire and offered to pay the deductible on the landlord's insurance claim. The landlord stated that she will not be making an insurance claim as the deductible is \$100,000.00 and the total damage is less than \$12,000.00. The landlord filed a letter from her insurance company to confirm this. The parties discussed options to settle the claim, and the tenant offered to pay \$100.00 per month towards the damage. The landlord rejected the offer and stated that it was not feasible and chose to file an application for dispute resolution.

The landlord stated that upon receiving complaints from the other occupants of the building, on May 05, the landlord gave the tenant a verbal warning about her use of marijuana inside the apartment. The tenant denied using marijuana but recalled the conversation with the landlord. On May 30, 2011 a representative of the landlord - the Resident manager, spoke with the tenant a second time regarding the use of marijuana and the odour emanating from the rental unit. The resident manager reported the problem to the head office and on June 01, 2011 the tenant was served with a warning letter. On June 14, 2011 the tenant was served with a second warning which was followed up with a notice to end tenancy for cause. Both warning letters were delivered to the tenant by the Resident Manager.

The tenant agreed that she had received a verbal warning and a written warning on June 14, but denied having received a warning letter on June 01. In the body of the second warning letter there is a reference to the first letter dated June 01. The tenant denied the use of marijuana.

The tenant stated that prior to moving in; she paid rent for the last month of tenancy. Initially she stated that she was forced to pay this extra month's rent, but later stated that she offered to pay for her own personal reasons. This payment resulted in a credit on the tenant's account.

Regarding the cost of repairs, the tenant filed photographs showing water damage to the ceiling that she stated was present in the unit from the start of the tenancy. She also filed photographs that show black spots on the underlay which she stated was mould that was existent prior to the fire. The tenant intended to prove that while the fire caused damage, there was some damage that was in existence prior to the fire. All the photographs that were filed by the tenant were taken after the fire. The landlord argued that the repairs were done only to the areas affected by the fire.

The tenant stated that in the past, there was a leak from the upstairs unit which caused the water stains on the ceiling and the mould in the carpet. The landlord accessed the file of the unit above the dispute rental unit and found no complaints of any leaks in the records of the upper unit. The tenant also filed a report of an inspection ordered by another occupant of the building that addresses the condition of the roof and resulting problems. The landlord stated that the dispute rental unit is located on the first floor of the three storey building and therefore, the problems with the roof would have no direct impact on this rental unit.

The tenant stated that the sprinklers were faulty and the one in the bedroom let out a weak mist while the other sprinkler compensated by letting out a forceful spray which caused damage to the ceiling drywall. The tenant stated that the force was so great that she was thrown to the ground when she walked through the spray. The tenant also stated that the faulty sprinkler could not be turned off easily and therefore sprayed far more water than was necessary – causing water damage to the carpets of the rental unit, the surrounding units and the hallway. The landlord filed a report of an inspection of the sprinklers carried out prior to the fire, on February 24, 2011. The report states that the sprinkler system was in working order and specifically mentioned that the sprinkler heads in the rental unit were to Code and that no leaks were detected.

On June 16, 2011, the landlord served the tenant with a one month notice to end tenancy for cause. The reasons for the notice were:

- the tenant has put the landlord's property at significant risk
- has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant
- has jeopardised a lawful right or interest of another occupant and
- has caused extraordinary damage to the unit

The landlord has applied for an order of possession effective July 31, 2011 and for a monetary order for the following repairs:

1.	Fire call out	\$508.91
2.	Ceiling drywall repair	\$530.00
3.	Drying and reinstalling carpet	\$10,080.00
	Total	<b>\$11,118.91</b>
	Minus credit on tenant's file	\$910.00
	Balance owed	<b>\$10,208.91</b>

The landlord has filed invoices to support the above monetary claims.

### **Analysis**

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy on June 16, 2011. In order to support the notice to end tenancy, the landlord must prove at least one of the reasons for the notice.

Based on the documentary evidence and the verbal testimony of both parties I find that on a balance of probabilities, the tenant smoked marijuana inside the rental unit on at least one occasion. The tenant received two verbal warnings followed by two written warnings. I find that by continuing to use marijuana despite a verbal and written warning from the landlord the tenant put the landlord's property at significant risk. I also find that the fire was a result of neglect on the part of the tenant and it caused extraordinary damage to the unit. Therefore I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy.

I find that 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 1:00 p.m. July 31, 2011. The Order may be filed in the Supreme Court for enforcement.

The landlord has filed adequate evidence to support her monetary claim. The tenant agrees that she caused the fire and therefore is liable for the cost incurred by the landlord to rectify the damage caused by the fire. The landlord made efforts to mitigate her losses by drying out the existing carpet instead of replacing with new carpet. The landlord also repaired only the areas of the ceiling that were damaged by the fire.

I find that the landlord has established a claim of \$10,208.91400.00 for restoration costs. Since the landlord has proven her claim, she is also entitled to the recovery of the filing fee of \$100.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$10,308.91**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective on or before **1:00 p.m. on July 31, 2011** and a monetary order in the amount of **\$10,308.91**.

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 25, 2011.

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Residential Tenancy Branch