



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application.

The tenants father and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the reasons given on the One Month Notice to End Tenancy for cause?

Background and Evidence

Both parties agree that this tenancy started on February 12, 2011. This was a fixed term tenancy which reverted to a month to month tenancy on August 31, 2011. Rent for this unit is \$815.00 per month and is due on the first day of each month in advance. The parties also agree that the tenants father attending the hearing today is named on the tenancy agreement although has never resided at the rental unit but does pay the rent for this unit for his son.

The landlord testifies that the tenant has caused a disturbance to another tenant who lived next door to this tenant. The other tenant has sent compliant letters to the landlord concerning a high level of noise from the tenants unit which has disturbed her sleep and affected her life. The first compliant letter was sent on July 10, 2011 concerning loud music from the tenants unit. The complainant also states in her letter that she has been woken up many nights during the week after midnight with loud music which continues until 4.00 a.m. This other tenant states in her letter that she cannot complain to the tenant as the last time she complained to him the tenant swore at her, slammed the door and turned the music up louder. The landlord sent the tenant a warning letter concerning this compliant on July 12, 2011. The landlord states the tenant was contacted and he apologised and said he would try to keep the noise down.

The landlord testifies they received another compliant letter from the tenant's neighbour on August 17, 2011 detailing similar noise issues and asking the landlord to move her to another unit away from this tenant. The landlord sent the tenant in question another warning letter on August 17, 2011. The tenant was again contacted by the landlord and he again said he was sorry and would try to keep it down. The landlord states the tenant was told that this behaviour could not be tolerated

The landlord testifies they received another compliant letter from the tenants neighbour on October 23, 2011. This letter detailed noise and disturbances including foul language and banging on the wall around 2.00 p.m. The noise restarted around 1. 00 a.m. when the other tenant was woken by this tenant banging and slamming something shut.

The landlord sent the tenant another final warning letter and served the tenant with a One Month Notice to End Tenancy. The landlord states she went to the tenants unit to talk to him about the Notice but his television was on so loud he could not hear the landlord knocking on his door. This Notice was served upon the tenant on October 26, 2011 by posting it to the tenant's door. The Notice has an effective date of November 30, 2011 and gave one reason to end the tenancy i.e.

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

- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord testifies that the tenant has not disputed the Notice. The landlord states the tenant was informed he must move out by November 30, 2011. The tenant informed the landlord that he did not have enough notice and could not move out on this day. The landlord states they had arranged for new tenants to move into the unit on December 01, 2011 but these arrangements had to be cancelled as the tenant failed to move out.

The landlord testifies the tenant's father paid rent for December, 2011 and this was accepted for use and occupancy only. The landlord seeks an Order of Possession and is willing to extend the time until December 31, 2011. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The tenant's father testifies that they have been trying to help their son move out but he cannot find alternative accommodation this time of year. The tenant's father asks the landlord if any other tenants have complained about noise issues with his son as he states his son had told him that the person making the complaints had issues with his son. The tenant's father states as this other tenant has now been moved to a different unit there have been no further complaints from the new tenants occupying the unit next door.

The landlord testifies that the new tenant in the neighbouring unit was been overseas almost since the start of her tenancy and the neighbour on the other side is an elderly tenant who just makes a face when asked if the tenant disturbs him.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords application for an Order of Possession; when a Notice of this nature is served upon a tenant by posting the notice to the tenants door; the notice is considered to have been served three days after posting. In this case the tenant is

deemed to have received the Notice on October 29, 2011. The second page of the Notice provides information to a tenant about what steps they can take when they have been served with a One Month Notice. This information informs the tenant that he has 10 days to dispute the notice by filing an application for Dispute Resolution. If the tenant fails to do this then the tenant is presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date of the Notice.

The tenant did not dispute the Notice within 10 days and therefore the tenant is conclusively presumed to accept the end of the tenancy. Consequently, the One Month Notice to End Tenancy is upheld and the landlord is entitled to an Order of Possession.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on December 31, 2011. 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 also 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 of \$407.50 leaving a balance \$357.50 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act* at the end of the tenancy.

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 20, 2011.

Residential Tenancy Branch