



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's Application seeking to end the tenancy, based on a 1 Month Notice to End Tenancy for Cause (the "Notice"), a monetary order for damage to the rental unit and money owed or compensation for damage or loss, and to recover the filing fee for the Application.

Both parties and their translators appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

As a preliminary issue, I have determined that the portion of the landlord's application dealing with a request for a monetary order for damage to the rental unit and money owed or compensation for damage or loss is unrelated to the primary issue of seeking an order of possession due to the Notice. Additionally I find that the landlord's request seeking a monetary order is premature as the tenancy has not yet ended.

As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the landlord's Application and dismissed that portion of the landlord's request for a monetary order, **with leave to reapply**.

The hearing proceeded only upon the landlord's application to enforce a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and to recover the filing fee?

Background and Evidence

This one year fixed term tenancy began on October 1, 2011, is set to expire on September 30, 2012, monthly rent is \$1,995.00 and the tenant paid a security deposit of \$1,000.00 on or about September 6, 2011.

The landlord issued a 1 Month Notice to End Tenancy for Cause. The Notice was dated December 26, 2011, was delivered via personal delivery on that date, listing an effective end of tenancy on January 31, 2012.

The Notice explains that the tenant had ten days to dispute the Notice. It also explains that if the tenant does not file an Application to Dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The causes as stated on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, caused extraordinary damage to the rental unit, and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Upon query, the landlord admitted that he misunderstood this cause and could not point to a term in the tenancy agreement to which this referred. As a result, I have excluded this listed cause from consideration.

The landlord's relevant evidence included copies of notices of inspection for December 16, and a "continuing" inspection on December 26, 2011, a letter of response from the tenant of denying damages and a complaint about the number of contacts from the landlord as well as a request to not enter the rental unit without permission, the Notice, and witness statements.

In support of his Notice, the landlord stated there were four issues with the rental unit which led to the issuance of the Notice, namely, that the tenant had drilled holes into the kitchen counter to install a water filtration system, that the tenant had removed a counter nook from the breakfast area, that the tenant had installed electric toilet seats and that the tenant had put a sheet of plywood over the entrance from the deck.

The landlord submitted that at his inspection of the rental unit on December 16, 2011, he noticed the above issues and submitted a written demand to the tenant that he correct the work done. The landlord denied that he gave permission to the tenant to drill

holes into the counter, install electric toilets, move the counter nook to the deck or place a piece of plywood over the door opening.

In response, the tenant stated that when he moved in, the landlord had not concluded the repairs and renovations. One of the items of the renovation included removing the deck door, which prompted the tenant to place a piece of plywood over the opening, especially considering that the tenant was the victim of a robbery, through the deck door opening.

The tenant stated that he had obtained the landlord's permission during the landlord's renovations to install a water filtration system, which led him to install the unit three days into the tenancy.

The tenant stated that he did not move the counter nook and instead it was the landlord who put the nook on the deck. The tenant stated that the nook was not attached and was movable.

The tenant stated that the toilet seats are removable as the item was a plug-in, were not attached and not connected.

Upon query to the landlord, the landlord confirmed that there was no move-in inspection and therefore no condition inspection report. The landlord also confirmed that he had not completed renovations at the time the tenancy started and that there was no door on the deck opening as he had wanted to enclose the area.

The landlord stated that the tenant did not allow him to finish the renovation to the rental

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

I find that the tenant received the 1 Month Notice to End Tenancy for Cause on December 26, 2012, and did not apply to dispute the Notice. Therefore pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental unit.

I therefore find that the landlord is entitled to an order of possession effective on the effective date listed on the Notice, **January 31, 2012, at 1:00 p.m.**

I am enclosing an Order of Possession with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Supreme Court should the tenant fail to comply with this order by vacating the rental unit on the day and time listed.

I find that a portion of the landlord's application had merit, and I therefore award him a portion of his filing fee, in the amount of **\$25.00**. The landlord may withhold the amount of \$25.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The landlord is granted an Order of Possession.

The portion of the landlord's application requesting a monetary order 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: January 26, 2012.

Residential Tenancy Branch