



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 tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 13, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for cause?

Background and Evidence

The landlord testifies that this tenancy started on June 01, 2011. Rent for this unit is \$950.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenants were served a One Month Notice to End Tenancy on November 28, 2011 in person. This Notice had an effective date of December 31, 2011 and gave the following reason to end the tenancy:

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 tenants did not dispute the notice but asked for another month to move out. The landlord testifies that the tenants did not move out by January 31, 2012 as agreed and the landlord then filed their application for an Order of Possession. The landlord has provided rent receipts for the months following November, 2011 showing that rent was accepted for use and occupancy only.

The landlord testifies that they received numerous complaints from both the Strata Council and neighbours of these tenants concerning loud noise coming from their rental unit. The landlord responded to these complaints and served the tenants with a complaint letter dated September 29, 2011 and as the noise continued the landlords followed this up with a breach letter on October 14, 2011. The noise continued from the tenants unit so the landlord then issued the One Month Notice to End Tenancy on November 28, 2011. The landlord has provided copies of the e-mails, the complaints, the letters from the Strata Council and a copy of the One Month Notice in evidence.

The landlord seeks an Order of Possession and seeks to recover their \$50.00 filing fee paid for this proceeding.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

Section 47(5) of the *Residential Tenancy Act (Act)* states:

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

Furthermore I am satisfied with the landlords documentary evidence and sworn testimony before me that the reason on the Notice is justified and the tenants have caused a significant disturbance over a period of time to the other occupants in the building.

I therefore uphold the One Month Notice to End Tenancy and grant the landlord an Order of Possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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 deposit and

interest of \$475.00 leaving a balance \$425.00 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

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: March 01, 2012.

Residential Tenancy Branch