



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 response to the landlord's application for an Order of Possession cause and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine 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 for cause?

Background and Evidence

The parties agree that this month to month tenancy started on July 05, 2012. Rent for this unit is \$750.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$375.00 on July 05, 2012.

The landlord's agent testifies that they received complaints about this tenant from a neighbouring tenant concerning excessive people coming in and out of the tenants unit

and excessive noise from the tenant and her guests. The landlord's agent testifies that this neighbour at first complained verbally to the landlord's agent so the landlord's agent spoke to the tenant about these issues. The noise continued and further written complaints were received by the landlord. The landlord's agent testifies that the tenant was served a breach letter on August 21, 2012. This letter informed the tenant that any further complaints would result in a One Month Notice to End Tenancy being issued to the tenant. A copy of the breach letter has been provided in evidence.

The landlord's agent testifies that after the breach letter was sent further written complaints were received about the tenant's noise which significantly disturbed another tenant. These letters were sent to the landlord on August 26, 2012 and September 28, 2012. In one complaint letter the complainant has provided a time line of noise events from September 13 to September 28, 2012. These letters have been provided in evidence.

The landlord's agent testifies that the tenant was then served with a One Month Notice to End Tenancy on September 28, 2012 in person. This notice has an effective date of October 31, 2012 and gave the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit
- 2) 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's agent testifies that the tenant has not filed an application to dispute the Notice and refuses to move from the rental unit. Therefore the landlords seeks to have the Notice upheld and requests an Order of Possession for December 31, 2012 as the tenants rent has been paid up to the end of December.

The tenant disputes the landlord's claims and states she has not had had an unreasonable number of occupants in the rental unit but agrees she has had guests in her unit. The tenant testifies that the door the neighbour complains about slamming is a common door in the hallway that slams all the time. The tenant testifies that this neighbour who has complained cannot see the tenant's door from his unit so he cannot see when the tenant leaves or enters her unit.

Analysis

When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenant on September 28, 2012. The tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act* and the landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on December 31, 2012**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court if the tenant does not vacate the rental unit on that day.

I find that the landlord is entitled to be reimbursed the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$375.00 leaving a balance \$325.00 which must be returned to the tenant 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: December 06, 2012.

Residential Tenancy Branch