



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for cause; an Order of Possession because the tenant breached an agreement with the landlord; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 03, 2013. Mail tracking documents were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause or because the tenant breached an agreement with the landlord?

Background and Evidence

The landlord's agent MM testifies that this tenancy started on September 01, 2004. Rent for this unit is now \$749.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$312.50 on August 26, 2004.

The landlord's agent MM testifies that the tenant was served with a One Month Notice to End Tenancy on December 06, 2012 by posting the Notice to the tenant's door. This Notice has an effective date of January 03, 2013 and gives two reasons to end the tenancy:

- 1) *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,*
- 2) *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The landlord MM testifies that since 2006 the tenant has been frequently advised about her behaviour of that of her guests which cause disturbances to other tenants. Since 2006 the problem has increased and since August 2006 the landlord has sent the tenant seven breach letters. These letters have been included in the landlord's documentary evidence. The landlord testifies that the tenant has held loud parties which go on late at night, there has been marijuana smoked on the premises, the tenants son has broken into other tenants units and has been found drunk on the premises and the tenant has endangered other tenants and the landlords property by disconnecting her smoke alarm, despite warnings not to do so. Smoke has been seen coming from the tenants unit and another tenants had to call the fire service.

The landlord's agent UW testifies that this is a crime free building and when the tenants association meets there are repeated complaints from the other tenants about incidents

occurring at the tenants unit. The police have been called on many occasions and recently the tenant herself called the police at midnight claiming her son was abusing the tenant and a female friend. The police came to the unit and were called back again at 4.00am this time with helicopters and police dogs which also disturbed the other tenants.

The landlord seeks an Order of Possession to take effect as soon as possible.

The landlord has provided extensive documentary evidence detailing the breach letters sent to the tenant, numerous compliant letters from other tenants, police file numbers and police files requested by tenants who have made complaints, Occurrence, theft or vandalism reports, fire officer reports and a copy of the One Month Notice.

Analysis

The tenant 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 tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

I find the landlord has provided sufficient evidence to support the reasons given on the One Month Notice to End Tenancy for cause and has provided sufficient evidence that the tenant has breached a material term of the tenancy agreement that was not corrected by the tenant after written notice to do so was given by the landlord.

I further find 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 December 06, 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 **two days after service** on the tenant. 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 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 \$312.50 leaving a balance \$262.50 plus any accrued interest 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: January 29, 2013

Residential Tenancy Branch

