



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC LRE OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover their filing fee for this application.

Service:

The Notice to End Tenancy is dated April 25, 2013 to be effective May 31, 2013 and the tenant confirmed it was served by posting it on their door on April 25, 2013. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on May 8, 2013 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Preliminary Issue: The tenant has 10 days to dispute a Notice to End Tenancy for Cause. They filed their Application on May 7, 2013 and said the Residential Tenancy Branch is not open on weekends so they did not think those days counted in the ten day limit. I find the Notice was posted on their door on April 25, 2013. Items posted on the door are deemed to be served the third day after posting so I find this Notice was deemed to be served on April 28, 2013; therefore I find the tenants filed their dispute within the 10 day limitation.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for cause should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy

commenced in September 2012 and rent is \$1150 a month. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable time after written notice to do so (2(A); and
- b) The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

When queried, the landlord said he did not know what clause 2(A) was or what material term the tenants breached. He said the building manager had completed the Notice and served it. He said the second grounds above were based on one incident where the tenant entered the unit while bed bug treatment was being performed and thus the landlord had to schedule and pay for another bed bug treatment.

The tenant agreed he had entered the unit for five minutes during the treatment as he had just come home from work and needed to use the bathroom urgently. He said the bathroom was used for storage of their items and was not being treated. He said he enquired from the pest control personnel, they did not refuse him entry but said it was his unit and he could come in when he wanted and they did not tell him that he would be affecting their scheduled treatment. In fact, he contends he did not as there are many issues with bed bugs in the building and there have been numerous treatments. The tenant's wife also wrote a letter to say she had permission to enter to retrieve the laundry to take to the Laundromat. No pest control persons attended the hearing to counter this evidence. The tenant requested recovery of the filing fee as he said he tried on a number of occasions to resolve this issue but the management did not return his calls. He thinks the current building manager may have some personal issues with his family of three children as they live directly above her.

Included with the evidence is a copy of the Notice to End Tenancy and some statements from the tenants.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the tenant credible and I prefer it to the evidence of the landlord in respect to the causes cited. The landlord was unable to provide evidence regarding which material breach of the lease occurred and unable to provide credible evidence to

dispute that the tenant had permission from the pest control company to enter the suite during the treatment. He also provided insufficient evidence to demonstrate how this brief entry seriously jeopardized anyone's health, safety or lawful right.

For all of the above reasons, I find the Notice to End Tenancy dated April 25, 2013 is set aside. The tenancy is reinstated. I find the tenant also entitled to recover their filing fee as they were successful in this application.

Conclusion:

I HEREBY ORDER THAT the Notice to End Tenancy dated April 25, 2013 is hereby set aside and the tenancy is reinstated.

I HEREBY ORDER THAT the tenant is entitled to recover \$50 for his filing fee by deducting \$50 from his rental payment for July 2013.

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: June 04, 2013

Residential Tenancy Branch

