



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC 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.

Service:

The Notice to End Tenancy is dated September 11, 2013 to be effective October 11, 2013 and the tenant confirmed it was posted on her door. The effective date on the Notice is automatically corrected to October 31, 2013 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant gave evidence that they served the Application for Dispute Resolution on by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

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 May 2013 with a fixed term tenancy expiring April 30, 2014, rent is \$850 a month and a security deposit of \$425 was paid. The landlord served a Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant is repeatedly late in paying rent;
- b) 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 or (iii) put the landlord's property at significant risk;

The landlord said that rent has been a few days late every month, she has to go and specifically request the rent each month and she issued a 10 day Notice on September 5, 2013 for unpaid rent. The tenant did not disagree with this and noted that she had been getting new cheques and also has been dealing with a death in the family.

On the second cause, the landlord said that the tenant and her male friend have loud arguments which seriously disturb other residents; she provided three letters of complaint in evidence and said she had received another two. The complaints relate to loud yelling and screaming during arguments and to the Police having to be called. The landlord said it had been also reported to her that the tenant and/or her friend had broken the glass in the entry door in one of their altercations; she provided a receipt to fix the door in the amount of \$150. The tenant acknowledged that she and her friend had had arguments and a neighbour had called the Police twice but she said that there were no charges laid. She also noted that the glass in the entry door got broken by her friend rapping on it to get her attention when he forgot his key; however, both parties acknowledged the tenant had behaved responsibly in cleaning up the glass immediately. The tenant said she had received no warning letters about her behaviour and she thinks she should have been given some.

The tenant noted that she has significant problems in finding another residence as she has two dogs and is grieving the death of a relative. The landlord agreed to assist her by having November 30, 2013 as the effective date of the Order of Possession and the tenant agreed to supply the landlord with a key to the changed locks by November 15, 2013. The tenant enquired about her security deposit and both parties were advised of their rights and obligations under section 38 of the Act.

Included with the evidence are three complaint letters, and an invoice for a door repair. 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 landlord credible in respect to the causes cited, namely, that the tenant or a person permitted on the property by her has significantly interfered with or unreasonably disturbed another occupant or the landlord. Three tenants in their

letters support the landlord's oral sworn testimony that this tenant has frequent loud arguments which disturb others and the tenant confirmed that the neighbours had called the Police twice in respect to this. In order to establish this cause of unreasonable disturbance, it is not necessary to establish that the Police laid charges; I find it is sufficient to establish that the noise significantly interfered with and disturbed other residents and I find the landlord's evidence sufficiently establishes this. The tenant also confirmed that the glass in the entry door was broken by her friend knocking on it.

I find the landlord's evidence credible that the tenant has been repeatedly late paying rent. Although the tenant said it was only a few days on each occasion, I find that even one day late is late payment and there were at least four late payments.

Although the tenant stated the Notice should be set aside because she had not been given a warning letter, I find that this is not a pre requirement to a section 47 notice to end tenancy for significant interference with peaceful enjoyment of other occupants. If the landlord serves the notice for breach of a material term of the lease under section 47(1) (h), the landlord would be required to give written warning to correct but this notice was served under section 47(1) (b) and (d).

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on October 31, 2013 as automatically corrected under section 53 of the Act. As the landlord requested in the hearing an Order of Possession effective November 30, 2013, I issue an Order of Possession as authorized by section 55 of the Act.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on October 31, 2013 (as corrected). No filing fee was paid. An Order of Possession is issued to the landlord effective November 30, 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: October 31, 2013

Residential Tenancy Branch

