



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, FF, O

For the landlords – OPC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks to cancel the One Month Notice for cause and to recover their filing fee. The landlords seek an Order of Possession for cause, and to recover their filing fee.

The tenant served the landlord by registered mail on December 10, 2013 with a copy of the application and a Notice of the Hearing. The landlords served the tenant in person on January 23, 2014 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared along with agents for the landlord, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?
- Are the landlords entitled to an Order of Possession for cause?

Background and Evidence

The parties agree that this tenancy started in September 1984. Rent for this unit is \$330.00 per month and is due on the 1st day of each month. The landlords purchased this property and became the landlords in 2013.

The landlords' agent testifies that the tenant was served with a One Month Notice to End Tenancy on November 30, 2013. This Notice gave the following reasons to end the tenancy:

- 1) *the tenant or a person permitted on the residential property by the tenant has*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *Put the landlord's property at significant risk;*
- 2) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) *Damaged the landlords' property*
 - (ii) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) *Jeopardized a lawful right or interest of another occupant or the landlord*

The landlords' agent testifies that the house is in a terrible condition. The landlords viewed the house and took photographs in November, 2013. The landlords requested that the tenant clean up the house and outdoor area, however, very little work has been completed by the tenant. The landlords sent in a restoration company to inspect the house and take further photographs. The restoration company and the landlords deem this house to be a fire risk due to the large amount of stored items, creating an unhealthy and unsafe environment. The air quality due to this is also been reported as poor. There is garbage all over the house and yard, rodents are nesting in the in the house and

rodent droppings continue to be seen in the house showing that the tenant has not cleaned the interior of the house. The floor has rotted through and the bathroom and kitchen are in a disgusting condition. The landlords also noted that there were inflammable substances stored next to the fire and these continued to be stored there when the restoration company viewed the house.

The landlords' agent testifies that neighbours have complained about the state of the yard and are going to call the City about the large amount of unsightly mess. The City has a good neighbour bylaw which they will have a right to enforce because of the condition of the yard. Based on the overall condition of the house and yard the landlords seek an Order of Possession. The landlords recognise that due to the large amount of belongings and garbage at the property the tenant will not be able to move these items in two days and therefore request an Order of Possession effective on February 15, 2014.

The tenant testifies that the landlords' photographic evidence is fairly accurate. The tenant testifies that he has started to clean up and sell some items but he also has outbuildings to clear. The tenant testifies that in the landlords' letter it requested that the tenant store his belongings in plastic containers and the tenant states he has started to do this. The tenant agrees there have been rodents in the past and they come back occasionally.

The tenant refers to the landlords' photographs of the bathroom and states this is like this due to previous water problems that were not addressed by the previous landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlords' evidence is contradicted by the

tenant, the landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlords have had an independent report done of the property by a restoration company. This report, which includes photographic evidence, shows a large amount of debris and belongings scattered in and around the property. The report also details damage to the interior of the property for which the tenant is deemed responsible. The report and photographic evidence shows that the unit is in a filthy condition which does not appear to have been cleaned or cared for in many years with an abundance of stored items and garbage. Under s. 32(2) and 32(3) of the *Residential Tenancy Act* (Act) a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I am satisfied with the evidence before me that the tenant has not complied with s. 32 of the Act which could result in seriously jeopardizing the health, safety or lawful right of the landlords if they have to enter the unit for any purpose and has put the landlords' property at significant risk. I am not wholly satisfied that the tenant has engaged in any unlawful activities other than City bylaws infractions concerning the outside of the property and the large amount of items strewn around the property; although no action has yet been taken by the City. However the tenant has jeopardized his own tenancy by the condition the unit and property has been kept in and been allowed to deteriorate into.

Consequently I must dismiss the tenant's application to have the One Month Notice set aside and uphold the landlords' application for an Order of Possession and to recover the filing fee paid for this application.

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective on February 15, 2014. 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 the landlords are entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for this amount. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

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 30, 2014

Residential Tenancy Branch

