



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 allow a tenant more time to make this application and to cancel a notice to end tenancy for cause pursuant to section 47 as no verbal or written warning was given before the notice was served;
- b) To find that service of the Notice was not legal as it was served by putting it under his door.

Service:

The Notice to End Tenancy is dated January 4, 2014 to be effective February 4, 2014 and the tenant confirmed he received it as it was put under his door. The effective date on the Notice is automatically corrected to February 28, 2014 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 personally served the Application for Dispute Resolution. I find the documents were sufficiently served for the purposes of this hearing.

Preliminary Issue:

The tenant requests an extension of time to file this Application. I find the Notice to End Tenancy was served by putting it under the door on January 4, 2014; this is deemed to be received the 3rd day after service. The tenant filed his application on January 14, 2014 which is well within the 10 days from deemed service permitted by the Act. Therefore I find the tenant does not need an extension of time.

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 October or November, 2013, rent is \$560 a month and a security deposit of \$280.00 was paid in October 2013. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord (by smoking in a non smoking building); and
- b) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The parties agreed there was a written tenancy agreement but there was not a non-smoking term in the lease. However, the landlord said he has the No Smoking signs posted at the front and back of the building and the tenant was well aware of the rules, especially as he has a brother who lives there too. The tenant agreed he smoked in his unit; he said he was ill and it was too cold to go outside in this Northern town. He said he had had no warning letter.

After discussion, the parties agreed to settle on the following terms and conditions:

Settlement Agreement:

The tenant agrees to vacate his unit by March 31, 2014 and the landlord will receive an Order of Possession for that date.

This settles all matters on this tenancy between the parties to this date.

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. Pursuant to the settlement agreement reached in the hearing, I find the landlord is entitled to an Order of Possession effective March 31, 2014.

I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on February 28, 2014 as automatically corrected under section 53 of the Act.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. I find him not entitled to recover the filing fee for this application.

The tenancy is at an end on February 28, 2014 (as corrected). An Order of Possession is issued to the landlord effective March 31, 2014 as agreed by the parties.

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: March 05, 2014

Residential Tenancy Branch

