



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding R. H. Ash and Associates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPR, MNR,

Introduction

This hearing dealt with two related applications. One was an application for dispute resolution by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. The other was an application by the landlord for an order of possession and a monetary order. Both parties appeared and had an opportunity to be heard. As the circumstances and parties are the same for both applications, one decision will be rendered for both.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced July 1, 2012 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. At the start of the tenancy the monthly rent, which is due on the last day of the month for the month following, was \$740.00. As of July 1, 2014 the rent was increased to \$755.00. The tenant paid a security deposit of \$370.00.

On May 27, 2014, the landlord issued and posted a 1 Month Notice to End Tenancy for Cause. A number of reasons were stated on the notice but the ones that are relevant are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord, and/or put the landlord's property at significant risk.
- Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property and/or, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant filed his application disputing this notice on June 6, 2014.

The tenant withheld payment of the July rent. On July 4 the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent. That document includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the

notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant has not paid the July rent nor has he filed an application for dispute resolution disputing the 10 Day Notice. He testified that he thought this issue would be included in the application he had previously filed.

The landlord's evidence in support of the 1 Month Notice to End Tenancy for Cause were letters from three other tenant in the building, a painting contractor who worked at the building on three separate days in June, and the property manager all describing a pattern of frequent, very short visits to the tenant's unit - some via the balcony, others via the interior hallway - by a large number of people at all hours of the day and night. Two residents described a very noisy fight between the tenant and another person in the parking lot after midnight over money at the beginning of June. Another resident described a series of noisy encounters between the tenant and a female tenant who lives down the hall. The property manager testified that several long-term tenants are threatening to move out of the building if the situation continues.

The tenant's evidence is that the letters are all lies; he is not selling drugs; the police have never been to his unit; he does not leave the exterior entry doors open; his unit is right across from McDonald's so his friends frequently stop by for a few minutes just for a quick chat.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The 10 Day Notice to End Tenancy for Non-Payment of Rent specifies that a tenant has no right to withhold rent without an arbitrator's order allowing them to do so. Further, the tenant should not have assumed that any application for dispute resolution would include any subsequent notices to end tenancy. It does not. The result is that the Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the Tenant.

I also find that the landlord has established cause, on a balance of probabilities, for ending this tenancy. I do not find the tenant's blanket denial adequate, or even convincing. I find that the activity in and around the tenant's unit – whether for legal or illegal purposes – has significantly interfered with and unreasonably disturbed other occupants of the building.

I find that the landlord has established a total monetary claim of \$805.00 comprised of the July rent in the amount of \$755.00 and the \$50.00 fee paid by the landlord for this application. Pursuant to section 72. I order that the Landlord retain the deposit of \$370.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$435.00.

Conclusion

- a. An order of possession effective two days after service on the tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$435.00 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) and enforced 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: July 24, 2014

Residential Tenancy Branch

