

Dispute Resolution Services

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding G & M TOTOS HOLDINGS LTD. and [tenant name suppressed to protect privacy] DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 55;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) at 11:00 a.m. on August 31, 2014. The landlord submitted documentary evidence (a witnessed proof of service document) to support his testimony. Based on the tenant's confirmation of receipt of the 1 Month Notice and pursuant to section 88 of the *Act*, I find the tenant was duly served with the 1 Month Notice with an effective date of September 30, 2014.

The landlord testified that he personally served the tenant with the dispute resolution hearing package, including a copy of the application for dispute resolution and the Notice of Hearing, on October 1, 2014. The tenant confirms receipt of the package on that date. Based on the tenant's confirmation of receipt of the Notice of Hearing and dispute resolution package and pursuant to section 89 of the *Act*, I find the tenant was duly served with the Notice of Hearing and dispute resolution package.

The landlord submitted documentary evidence for this hearing. He testified that the package was served on the tenant on October 2, 2014. The tenant confirmed receipt of all packages and materials within. Based on the testimony of both parties and pursuant to section 88 of the Act, I find the landlord served with the tenant's materials on October

2, 2014. The tenant also submitted documentary evidence on October 22 and October 31, 2014. The landlord confirmed receipt of all packages and the materials within. Based on the testimony of both parties and pursuant to section 88 of the Act, I find the tenant served with the landlord's materials on October 2, 2014 The tenant submitted evidence and provided that evidence to the landlord after the hearing as requested at the hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause? Is the landlord entitled to a monetary award for damage arising out of this tenancy? If so, is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs and the sworn testimony of the both parties, not all details of the submissions are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

This month to month tenancy commenced on September 1, 2013. Monthly rent was set at \$715.00, payable on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit paid on September 1, 2013. The tenant is still residing in the rental unit. His rent is paid and up to date.

The landlord and tenant agree that there are four available rental units on the property and there are currently 3 other sets of occupants on the property besides the tenant in this matter.

The landlord entered into written evidence a copy of his August 31, 2014 1 Month Notice to End Tenancy for Cause. In that Notice, requiring the tenant to end this tenancy by September 30, 2014, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

• significantly interfered with or unreasonably disturbed another occupant or the landlord...

Tenant has caused extraordinary damage to the unit... or property...

The landlord referred to a previous Residential Tenancy Branch hearing decision that dealt with this tenancy. That decision dated August 15, 2014 dealt with the tenant's application to cancel a notice to end tenancy. At that time, the tenant's application was allowed and the 1 Month Notice was set aside, with the effect that the tenancy continued. An order was made as part of that decision. The arbitrator ordered;

I order the tenant to discontinue making repairs to his truck at this rental property by August 30, 2014. In the event that the repairs to the tenant's truck have not been completed by that date, I order the tenant to remove the truck from this property to some location where the necessary repairs can be completed. Should this action become necessary, the tenant may return his truck to his rented parking space once the repairs have been completed and the truck can be driven to the rental property.

In the previous decision, the arbitrator stated, "I issue these orders to the tenant as I find that this major repair process has taken far too long and extends beyond the type of repairs that would normally be considered acceptable in a parking space in a shared rental property."

The landlord's application referred to this decision. However, the landlord did not claim that the tenant continued to make repairs to his truck on the property. He testified only that the tenant's truck was uninsured on the property. The landlord provided pictures in his documentary evidence of the tenant's damage to the property. These pictures are not numbered but are dated in handwriting on the back with dates ranging from August 31, 2014 to September 1, 2014. They show;

- A red and blue truck parked in the parking spot at the residence with the hood up;
- Several containers, plastic bins, items of furniture and blankets, tarps near a fence;
- A blue bin/recycling box;
- What appears to be a discarded couch;
- A small chair and table on grass under a tree;
- Oil stains on the parking area;
- Square marks or impressions in the cement, in the parking area.

I note that the day of these pictures is the day after the decision of the arbitrator in the previous hearing. The landlord made some effort to describe the impact of these items. He did not testify that the tenant is regularly repairing his truck on the property. He

believed that it was uninsured. The tenant submitted proof that the truck is insured, with storage insurance. He also provided some proof of repairs.

The landlord stated, in his testimony that the tenant is often intoxicated on the property and, on at least one occasion, he believes the neighbouring tenants were bothered. The landlord states that the tenant has caused several other tenants to end their tenancy at the residential premises. However the landlord stated that no other occupant on the residential property has ever stated that they ended their tenancy because of the behaviour of this tenant. The landlord did not produce any documentary evidence of previous complaints and did not testify that he had received any complaints with respect to the tenant.

The landlord also stated that the tenant has other occupants residing with him for periods of time. The tenant claimed that he sought and received the landlord's approval for other occupants. In response, the landlord agreed that the tenant sought and received the landlord's permission for other occupants to reside for a period of time.

The tenant testified that he pruned a tree but did not cut it down. He testified that he put in a garden after making a request to do so. He acknowledges that the landlord did not give him permission but that he did it anyway. The tenant acknowledges an oil stain and some other damage to the parking area. He testified that he has repaired the damage and attempted to clean up the oil. The landlord acknowledges, in his testimony that the tenant has attempted to clean and repair the parking area.

<u>Analysis</u>

On a tenant's application to cancel a notice to end tenancy (in this case, the 1 Month Notice), the burden of proof reverts to the landlord to show, on a balance of probabilities, that there is justification pursuant to the *Act* to end the tenancy.

The landlord claims that the property within the rental unit has been damaged in several ways. The landlord states that the carpet needs replacing within the tenant's suite; that the parking area has unsightly items and has an oil stain; that the tenant put a garden in his backyard without his permission; that the tenant cut down a tree without his permission.

Residential Tenancy Policy Guideline No. 1 clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and the obligations of the parties to the tenancy with respect to services and facilities. Some of this policy guideline relevant to the landlord's application is reproduced below; The tenant is ... generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit ... or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act ... (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion...

CARPETS ... The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, <u>at the end of the tenancy</u> the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy...

PROPERTY MAINTENANCE ... The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.

2. <u>Unless there is an agreement to the contrary, where the tenant has changed the</u> <u>landscaping, he or she must return the garden to its original condition when they vacate</u>...

5. The landlord is generally responsible for major projects, such as tree cutting, pruning ...

The landlord claims for extraordinary damage to the property and I find that extraordinary damage to cause the end of the tenancy has not been sufficiently proven. Some of the issues and damage that the landlord raises may be issues, as indicated above, more appropriately addressed when the tenancy comes to an end.

I find that the tenant has not caused <u>extraordinary</u> damage to the unit or property. The landlord has not provided evidence of damage that is exceptional or unable to be addressed within the terms of the tenancy agreement or within the provisions of the Act at the end of this tenancy. There is no testimony or evidence of an unhealthy or unsafe environment within the rental unit or on the residential premises.

I find that the landlord has not met his burden in justifying his notice to end tenancy. The tenant's application to cancel that notice is granted. The tenancy will continue.

As the tenancy continues, there is no need for me to consider the landlord's application to retain the tenant's security deposit. This portion of the landlord's application is dismissed with leave to reapply once this tenancy ends.

As the landlord has been unsuccessful in this application, the landlord bears the responsibility for his filing fee.

Conclusion

The landlord's application to end this tenancy for cause and obtain an Order of Possession is dismissed. The 1 Month Notice to End Tenancy for Cause is set aside with the effect that this tenancy shall continue.

The landlord's application for authorization to retain the security deposit is dismissed with leave to reapply at the end of this tenancy. The landlord's application to retain the filing fee is dismissed without leave to reapply.

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: December 4, 2014

Residential Tenancy Branch