



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolutions by the Landlord wherein the Landlord sought the following Orders:

1. For an Order of Possession based on a 1 Month Notice to End Tenancy issued for cause on September 12, 2014 (the "1 Month Notice");
2. A Monetary Order for:
 - a. unpaid rent or utilities;
 - b. money owed or compensation for damage or loss under the Act; and
 - c. to keep all or part of a pet damage or security deposit; and
3. to recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

At the outset of the hearing the Landlord confirmed that he was not proceeding on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served in October 2014 and he no longer sought a Monetary Order for unpaid rent or utilities.

In a case where a Tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the Landlord to provide their evidence submission first, as the Landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary relief?

Background and Evidence

The Landlord testified that the tenancy began two and a half years ago. Rent in the amount of \$600.00 was payable on the first of each month.

The parties agree that the 1 Month Notice was served on the Tenant indicating that the Tenant is required to vacate the rental unit on October 20, 2014

The reason stated in the 1 Month Notice was that the Tenant:

- is repeatedly late paying rent;
- has allowed an unreasonable number of occupants in the unit;
- has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- has put the landlord's property at significant risk;
- has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, or safety or physical well-being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord;
- has caused extraordinary damage to the unit or property; and
- has assigned or sublet the rental unit without the landlord's written consent. and

LANDLORDS EVIDENCE

The Landlord testified that the Tenant is repeatedly late paying rent and indicated the following:

- The May 2014 rent was not paid until May 8, 2014;

- The June 2014 rent was not paid until June 9, 2014;
- The August 2014 rent was not paid until August 11, 2014; and
- As of November 10, 2014, the date of the hearing, the November rent was not paid.

The Landlord testified that he has posted eight notices to the Tenant's door regarding the repeated late payment of rent. The most recent 10 Day Notice was undated and as noted in these reasons, the Landlord confirmed he was not proceeding on the most recent 10 Day Notice.

The Landlord stated that his primary concern and primary reason for issuing the 1 Month Notice was the fact that the rental unit was not insured due to the condition of the property. As a consequence, the Landlord's property was at significant risk.

The Landlord submitted that he has brought this issue to the Tenant's attention on at least 12 separate occasions including:

- On the first day the Tenant moved in; he says at this time, her previous landlord brought bags of garbage to the rental unit and he says he raised concerns with the Tenant at the time.
- Approximately a month and a half after the Tenant moved in, he began to notice the untidy condition of the property. He discussed his concerns with the Tenant and told her she needed to clean it up.
- Approximately three months after the Tenant moved in, he received complaints from the upstairs occupants who stated that they were concerned about the Tenant smoking and the condition of the property.
- The Tenant occupies the downstairs rental unit in a home owned by the Landlord. According to the Landlord, a representative of his insurance company attended the property two years ago, at which time he began warning the Landlord that if the property was not cleaned up, that it would not be insurable. The Landlord stated that when the insurance adjuster attended the property, the Landlord told the Tenant that she needed to clean the rental unit as well as the exterior.
- In the early spring of 2014 the Landlord told the Tenant that the condition of the property was not acceptable, that he was at risk of being uninsurable, and that should she not rectify the situation he may have no other option but to end her tenancy.

The Landlord submitted in evidence three photos of the rental unit. The first depicts the outside and which shows a significant amount of clutter. The second photo is of the upstairs

refrigerator, which the Landlord says the Tenant has been using without his consent. The third photo is of the upstairs kitchen, which again, according to the Landlord, is being used by the Tenant without his consent. The photo also shows a cluttered and messy kitchen.

The Landlord introduced two letters from his insurer:

- A letter dated September 11, 2014; and
- A letter dated November 9, 2014.

The September 11, 2014 letter confirms the rental unit is no longer insurable due to its condition.

TENANTS EVIDENCE

The Tenant testified that she did not dispute the 1 Month Notice as she did not believe that it was necessary for her to do so.

She stated that due to her work schedule she was often late payment rent. She confirmed that she paid the current month on November 17, 2014. She says that she did not receive any indication from the Landlord about her late payment of rent, nor did she receive any previous 10 Day Notices to End Tenancy for Non Payment of Rent.

Further, the Tenant testified that she has cleaned up the rental unit, but denied that the Landlord had ever brought this to her attention.

Analysis

Section 47(4) of the Act provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the tenant receives the notice.

In this case, the Tenant failed to make an application to dispute the notice. Section 47(5) of the Act provides that if a tenant who has receive a notice to end tenancy for cause does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

I also find that the Landlord has provided sufficient evidence to show that the Tenant has put the landlord's property at significant risk by keeping the rental unit in such a state that it is uninsurable.

I find that the Tenant received sufficient warnings by the Landlord to correct her behaviour; however, she continued to keep the property in such a state that the Landlord's insurer refused to insure the rental property.

I find that the Landlord is entitled to an Order of Possession effective **November 30, 2014**. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord has been successful with his application and the Landlord is entitled to recover the cost of filing the application. Therefore, I grant the Landlord a Monetary Order in the amount of \$50.00 and the Landlord is entitled to deduct that amount from the security deposit if full satisfaction of the claim.

Conclusion

The Tenant failed to dispute the 1 Month Notice. The Tenant also put the Landlord's property at significant risk by failing to clean up the property as requested by the Landlord's insurer.

The Landlord is granted an Order of Possession. I grant the Landlord a Monetary Order for the cost of filing their application and the Landlord is entitled to deduct that amount from the security deposit.

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 05, 2014

Residential Tenancy Branch

