



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL COLONIAL C/O GATEWAY PROPERTY MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;

Service:

The Notice to End Tenancy is dated January 30, 2015 to be effective February 28, 2015 and the tenant confirmed it was served personally on him. The tenant /applicant said they personally served the Application for Dispute Resolution; the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? 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 on May 1, 2010, it is now a month to month tenancy, rent is \$830 a month and a security deposit of \$387.50 was paid April 8, 2010. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the property by him has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- b) The tenant or a person permitted on the property by him has put the landlord's property at significant risk.
- c) There is a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord gave evidence that the building has a serious mouse infestation and that pest control who attend every few weeks to treat the building have said that much of the

indoor problem is emanating from the tenant's unit due to its unsanitary condition. She provided evidence of several pest control reports stating this.

The landlord said that the tenant's unit is also a fire hazard due to the hoarding habit of the tenant and this is putting the landlord's property at significant risk. She supplied photographs to support her evidence. She gave evidence that the tenant has breached a material term of his tenancy agreement by not maintaining his property in a clean and sanitary condition. Several warning letters issued to the tenant for the past year were included as evidence.

When asked to comment on the landlord's evidence, the tenant said he did not receive it. The landlord said it was served to him on February 25, 2015 at 11 a.m. after she called to ensure he was home. She said he signed he received it and she read out what he signed. She said he agreed he was a hoarder and said he needed a "break from her". The tenant said that signature was for the Notice to End Tenancy.

The tenant said he tries to keep his unit clean, there is no proof the mice emanate from his unit as he has lived in the building for 5 years and it has always had a problem with mice and the exterminators are there every few weeks and have not made a dent in the problem. He complained that he has no screens for his windows and this is unfair.

His advocate assisted the tenant to reach a settlement agreement.

Settlement Agreement:

- 1. The parties agree that if the tenant pays his rent for March plus the small outstanding amount he owes, he may stay until March 31, 2015.**
- 2. The landlord agrees to receive an Order of Possession effective March 31, 2015.**

Included with the evidence is the Notice to End Tenancy, several reports from the pest control service, several warning letters and photographs of the unit. 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. The test is found in section 47 of the Act. It is whether the landlord has proved on the balance of probabilities the following grounds cited in the Notice: a) The tenant or a person permitted on the property by him has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or b) The tenant or a person permitted on the

property by him has put the landlord's property at significant risk or c) There is a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that he or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord and has put the landlord's property at significant risk. I find her evidence well supported by the professional reports and photographs in evidence. I find the tenant also breached a material term of this tenancy agreement by not keeping his unit in a clean and sanitary condition; I find he was issued many warning letters concerning this.

While the tenant said he did not receive copies of the landlord's evidence and only signed for the service of the Notice to End Tenancy, I find the landlord's sworn testimony more credible as she described in detail the circumstances of service of the evidence and read out what the tenant signed at the time. I find the tenant's evidence not credible on this point as he received the Notice to End Tenancy at the end of January and the evidence package was not prepared for the hearing until late February.

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on February 28, 2015 but note the parties reached an agreement to have an Order of Possession effective March 31, 2015. Pursuant to section 55 and the request of the landlord in the hearing, an Order of Possession is issued.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end. An Order of Possession is issued to the landlord effective March 31, 2015 as agreed.

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 04, 2015

Residential Tenancy Branch

