



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLEASANTVALE HOMES SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, (MNR), MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord's agent CP stated that the landlord also seeks a Monetary Order for unpaid rent; the landlord did not check this box on the application; however, it is mentioned in the details of the dispute on the application. I will allow the landlord to amend their application to include the claim for unpaid rent as the tenant would be aware from the details of the dispute that this Monetary Order was being sought.

The tenant along with the tenant's social worker and three agents for the landlord attended the conference call hearing. The tenant and the landlord's agents gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a monetary Order to recover unpaid rent?

Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on February 13, 2014. Rent is now \$471.76 and is due on the first of each month. The tenant paid a security deposit of \$207.50 on April 01, 2012.

CP testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) in person on January 22, 2015. This Notice has an effective date of February 28, 2015 and gives the following reasons to end the tenancy:

- 1) *The tenant has allowed an unreasonable number of occupants in the unit*
- 2) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *Put the landlord's property at significant risk;*
- 3) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (ii) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) *Jeopardized a lawful right or interest of another occupant or the landlord.*

CP testified that the tenancy agreement states that this is a bachelor suite and the tenant must be the only occupant of the suite. The agreement also states that any guests can only stay for a maximum of two weeks in any one year. The tenant allowed

four other adults to reside in the suite from January 08, 2015. On January 18, 2015 CP informed the tenant that these guests must leave the suite however, the tenant's guests remain in occupation of the suite. The tenant has also allowed a dog to live in the suite without the landlord's permission. The tenant has breached the tenancy agreement concerning these matters.

CP testified that the tenant has significantly disturbed other occupants of the complex. CP testified that they have witnessed several police visits to the tenant's suite concerning the amount of traffic coming and going from the tenant's suite. The neighbours have raised many concerns about the late night and early hour's traffic which has disturbed the neighbours. The landlord suspects drug trafficking and the police have set up surveillance of the suite. The landlord provided police file numbers in documentary evidence. CP referred to the crime free housing agreement signed by the tenant and testified that the tenant is in breach of that agreement.

AB testified that he is the custodian of the property and lives on site. An Inspection was arranged for February 19, 2015 to check the cause of water damage in the tenant's suite. AB checked the roof and pipes and found nothing was leaking from these areas; however, inside the tenant's suite there were high levels of condensation because the windows and doors were closed and water was running down the windows. The flooring in the suite had also suffered water damage. At that time AB also witnessed hypodermic needles in the tenant's suite in full view on a table. AB took pictures of these hypodermic needles and these have been provided in evidence.

AB testified that he is aware of the large volume of traffic going and coming from the tenant's suite. AB testified that the high traffic to and from the tenant's suite occurs sometimes at 03.00 and 04.00 a.m. a person arrives in a taxi goes into the tenant's suite and leaves a few minutes later carrying a small package. Known drug users have also been seen coming and going from the tenant's suite. Other tenants are concerned about safety due to this and their tenancies have been significantly disturbed.

CP testified that the tenant's rent is paid by the Ministry; however, the tenant contacted the Ministry and asked them not to send the rent cheque for March to the landlord. Consequently, no rent has been paid for March, 2015. The tenant also took her name from the Fortis BC account and informed them she was leaving the rental unit on February 28, 2015. The tenant also advised CP that she was moving on that date; however, when CP arrived to do the move out condition inspection the tenant said she was going to stay in the unit until the hearing.

The landlord seeks an Order to keep the tenant's security deposit to offset against the unpaid rent. CP testified that they made an error when calculating the total amount claimed and they inadvertently included the security deposit in that calculation.

The landlord seeks an Order of Possession effective as soon as possible and seeks to recover the filing fee of \$50.00 from the tenant.

The tenant testified that she had family members living in the suite to help her with her health problems. These guests left on March 13, 2015. The tenant testified that if there were needles in the suite the tenant did not see them. The tenant testified that when people came and go from the suite the tenant is not aware as the tenant is asleep; these people would have been friends of her family members.

The tenant agreed that she had not paid the rent for March and testified that she didn't think she had to pay it as the landlord gave the tenant the Notice to end the tenancy on February 28, 2015. The tenant testified that she has not been able to find somewhere else to live and could not move from the suite on February 28, 2015.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of the Notice about how the tenant can

dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenant in person on January 22, 2015. The tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47(5) of the *Act*. The Notice indicates an effective date of February 28, 2015; however, as this date has since passed, the landlord is entitled to an Order of Possession effective two days after service upon the tenant pursuant to s. 55 of the *Act*.

Even if the tenant had disputed the Notice within the 10 allowable days I find there is sufficient evidence to support the reasons given on the Notice and the Notice would have been upheld and an Order of Possession would have been granted based on the reasons given on the Notice.

With regard to the landlord's claim to recover unpaid rent for March, 2015; I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant agreed that she withheld the rent for March; I find therefore the landlord has established a claim to recover rent for March as the tenant continues to reside in the rental unit and should have been aware that rent was due on March 01, 2015. The landlord is entitled to recover the amount of \$471.76. I find the landlord is entitled to keep the security deposit of \$207.50 pursuant to s. 38(4)(b) of the *Act*. I have offset the security deposit from the outstanding rent. The landlord will receive a Monetary Order for the balance of **\$264.26** pursuant to s. 67 of the *Act*.

As the landlords' claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service on the tenant**. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced as an Order of that Court.

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$314.26**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 17, 2015

Residential Tenancy Branch

