



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC MND FF

Introduction:

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

- a) To obtain an Order of Possession for landlord's for cause pursuant to section 47;
- b) To obtain a Monetary Order pursuant to section 67; and
- c) To recover the filing fee for this application.

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 and the Application for Dispute Resolution by registered mail. 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 the tenancy is ended pursuant to section 47 and they are entitled to an Order of Possession and to a monetary order as compensation for damages? Is the landlord entitled to recover the filing fee?

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 in February 1, 2010, it is now a month to month tenancy, rent is \$1085 a month and a security deposit of \$525 was paid in January 2010.

The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant or a person permitted on the property by them
 - (i) has seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
 - (ii) put the landlord's property at significant risk.

- b) The tenant has engaged in illegal activity that has, or is likely to
 - (iii) adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The tenant did not submit an Application to dispute the Notice. The landlord said that Emergency Services attended the suite for a medical emergency and as a result, the Fire Captain attended a few days later. The Fire Department report noted there were numerous black bags all over the suite which restricted the accesses and also the ventilation. The landlord said is a safety issue which affects the other residents and they are concerned about the restricted ventilation encouraging the growth of mould and other problems. They request an Order of Possession but agree it can be effective April 30, 2015 to allow the tenant some time to find other accommodation.

The landlord said also the tenant had not paid rent for the past two months and requests an amendment to add the lost rent to the Application. The tenant did not agree to the amendment and says he wants to dispute the rent because of issues in the building affecting his tenancy. Both parties were advised of their right to file an Application regarding the rent issue.

The tenant said they had now cleaned up the plastic bags but they don't dispute that those conditions did exist. He said his brother had an adverse reaction to a change in medication and that is why Emergency Services had to attend the suite. He said he intends to pay back rent and any damages provided he has an opportunity to examine what the landlord is alleging as owed and to make a claim himself concerning existing damage in the building.

In evidence is the Notice to End Tenancy, the tenancy agreement, the rent ledger and registered mail receipts.

Analysis:

I find that the landlord is entitled to an Order of Possession. The landlord served a Notice to End Tenancy pursuant to section 47. The Tenant did not make application pursuant to Section 47(4) to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* section 47(8) provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective April 30, 2015.

I find the landlord claimed the security deposit 'for possible damage to the unit'. In a claim for damages, the onus is on the applicant to prove the tenant caused damages,

that they are beyond reasonable wear and tear and the cost to cure the damage. I find the landlord has not proved any of these elements as he stated he does not know if there is damage or what it will cost to repair. Also, the landlord had not claimed outstanding rent in his Application so the tenant had no notice of this claim as required by the Principles of Natural Justice. Therefore, I dismiss this claim of the landlord and give them leave to reapply for rent owing and damages. As discussed with the parties in the hearing, section 38 must be followed in dealing with the tenant's security deposit.

Conclusion:

I find the landlord entitled to an Order of Possession effective April 30, 2015 as agreed in the hearing. I dismiss their Application for a monetary order and give them leave to reapply. I find the landlord entitled to recover the filing fee of \$50.

I HEREBY ORDER that the landlord may deduct \$50 from the security deposit of \$525 to recover the filing fee. This leaves a balance of \$475 remaining in trust for the tenant.

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: April 09, 2015

Residential Tenancy Branch

