



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord Application for Dispute Resolution, notice of this hearing and evidentiary material personally on May 6, 2015, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord. The landlord testified that the tenant was served on that date and in that manner, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and the testimony of the landlord is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?

Background and Evidence

The landlord testified that this tenancy began as a fixed term tenancy commencing on June 18, 2010 and ending on September 31, 2010. A copy of the tenancy agreement has been provided and it states that at the end of the fixed term, the tenant must move out of the rental unit, however the rental complex was sold and the tenant remained a tenant on a month-to-month basis. The tenant still resides in the rental unit.

Rent in the amount of \$485.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$220.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord further testified that the tenant's disturbing behaviour has been on-going despite warnings from the landlord. The tenant has been allowing people into the complex through the fire escape, causes smoke detectors to sound, a lot of noise at night from the rental unit disturbs other tenants, and is a general nuisance doing things such as throwing water balloons out onto the sidewalk below. Copies of warning letters have also been provided.

The landlord served the tenant personally with a 1 Month Notice to End Tenancy for Cause on March 27, 2015 in the lobby of the rental complex. A copy of the notice has been provided and it is dated March 27, 2015 and contains an expected date of vacancy of April 30, 2015. The reasons for issuing the notice are:

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk.

The tenant has not served the landlord with an application for dispute resolution disputing the notice, and the landlord seeks an Order of Possession and recovery of the filing fee.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute the notice. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the notice. In this case, the landlord testified that the tenant has not served the landlord with an application for dispute resolution disputing the notice, there is no such application before me, and the tenant has not moved out of the rental unit by the effective date contained in the notice. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee. I hereby order the landlord to keep \$50.00 of the \$220.00 security deposit, and deal with the remaining security deposit in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep \$50.00 of the security deposit as recovery of the filing fee and to deal with the remaining security deposit in accordance with the *Residential Tenancy Act*.

These orders are final and binding and may be enforced.

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: June 17, 2015

Residential Tenancy Branch

