



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied to cancel the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant RM testified that he would represent both named tenants at this hearing. After a review of all materials submitted for this hearing, both parties acknowledged receipt of the materials of the other party. The tenant testified confirming receipt by both tenants of the landlord 1 Month Notice to End Tenancy.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant gave undisputed testimony that this tenancy began on April 1, 2007. This tenancy began as a fixed term and continued as a month to month tenancy with a current rental amount of \$1260.00 payable on the first of each month. The landlord testified that he continued to hold the \$587.50.00 security deposit paid by the tenant on April 1, 2007.

The landlord has applied for an Order of Possession for Cause with the grounds to end tenancy as follows:

- The tenant has put the landlords property at significant risk; and
- The tenant has breached a material term of the tenancy.

The landlord submitted warning letters dated May 12, 2015 and June 17, 2015 sent to the tenant. It refers to regulations and rules including;

- That only vehicles may occupy parking spots, not residential property;
- That the tenant must not misuse or damage common areas;
- That garbage must be properly disposed of;
- That the laundry machine in the tenant's suite must be removed.

The landlord testified that the tenant has failed to abide by designated parking rules of the residence. The landlord testified that, as a result of ongoing problems with keeping unauthorized items in his parking spot and causing damage to the property by doing mechanical-type work in the parking spot, the tenant's parking spot has been taken away from him. The tenant submitted that because his parking spot has been taken away, this issue is resolved and no longer causing a problem for the landlord or their property. The tenant also noted that the parking related issues have been resolved since prior to the date of this hearing.

The landlord testified that in the spring of 2015, the residential premises were flooded. He testified that he was notified by the occupants in the suite below the tenant's suite. The landlord testified that, on investigation, he discovered that the tenant had an unauthorized washing machine in his unit that was not hooked up properly. The landlord testified that it was the source of the flood. The landlord testified that the tenant was not home at the time but he spoke with an occupant of the tenant's suite on entering. He testified that he told that occupant to tell the tenant he could no longer have the washing machine. The landlord testified that he was required to clean up water in more than one unit by vacuuming the water. The landlord testified that he attended the tenant's rental unit on a later date, entered the unit with the tenant present, assisted the tenant in disconnecting the washing machine and advised the tenant that it was not to be used. The tenant testified that when this matter was brought to his attention, he asked for assistance as he had been unable to disconnect the washing machine. He also testified that it is no longer in his rental unit and this issue is also resolved.

The landlord testified that this tenant has only made accommodations or changes (regarding parking and disconnection of the unauthorized washing machine) because of this dispute resolution process. He testified that there are ongoing issues with this

tenant and he is an ongoing vexation to the landlord. He testified that they are seeking an order to eliminate future and ongoing problems like the tenant leaving his garbage in the stairwell and leaving car fluids in the hallway carpets. The tenant testified that, when problems are brought to his attention, he does his best to resolve them to the satisfaction of the landlord. He also submitted that there is no evidence by the landlord that he is responsible for garbage in the stairwells or fluid on the common area carpets. Further, he testified that he is not responsible for these other infractions.

The landlord issued a 1 Month Notice to End Tenancy for Cause on May 27, 2015 with an effective date of June 30, 2015 by leaving a copy in the tenant's mail slot. The landlord applied for dispute resolution seeking an Order of Possession. On June 6, 2015, 7 days after the tenant was deemed to have received the 1 Month Notice, the tenant also filed (within the required time frame) for dispute resolution to cancel the notice to end tenancy and continue the tenancy.

Analysis

The landlord relies on two grounds to end this tenancy for Cause. First, the landlord submits that the tenant or a person permitted on the property by the tenant) has put the landlord's property at significant risk. The landlord relies on his warning letters and his testimony as evidence that his property is at significant risk. His testimony is that the tenant has interfered with the proper procedure for using the parking stalls. He also testified that the tenant may have caused damage to the ground in the parking stalls by doing mechanical work in the stalls that he pays for. He testified that the tenant's unauthorized washing machine caused flooding and flooding related damage that required cleanup.

The tenant counters that these issues have been resolved: he has disconnected and gotten rid of the washing machine and he has ceased to have a parking stall. He submitted that he has made these changes in compliance with the landlord's requests.

To rely on this ground to end tenancy, a landlord must show on a balance of probabilities that a tenant has put the landlord's property at **significant risk**. I do not find that the evidence provided by the landlord in his testimony regarding the tenant's use of parking stalls meets this burden. The landlord did not submit any evidence to indicate that damage was in fact done to the parking area. Furthermore, the issue is now resolved by the intermediate step of removing the tenant's access and use of parking stalls.

With respect to the flooding incident, the landlord presented no evidence to suggest that

significant risk to the property occurred as a result of the tenant's poorly functioning washing machine. The landlord testified that he was required to clean up the flooded areas. I could speculate that there was some cost for this clean up but the landlord has provided no evidence that this damage was either significant or that the tenant and his washing machine pose some kind of ongoing risk. The tenant provided undisputed sworn testimony that the washing machine has been removed from his unit. In the case of both the washing machine incident and the landlord's complaint with respect to parking stall use, I accept the tenant's testimony that both matters have been resolved. I find that there is no malice in the tenant's behaviour and no ongoing risk as a result of these past circumstances.

The landlord also testified, providing no evidence to support his testimony that the tenant leaves garbage in the stairwell and created stains on the common area carpets. The tenant disputed these claims. I do not find that the landlord has shown that these were actions of the tenant's or that they have resulted in significant risk to the landlord's property.

The landlord also relied on the provision of the 1 Month Notice that the tenant has breached a **material term** of the tenancy agreement. He relies on the same set of facts and circumstances described above; incorrect use of the parking stalls; an unauthorized washing machine in the suite; garbage in the stair wells; and stains on the common area carpets. A material term of a tenancy is something that is essential to the tenancy and closely linked to the idea of residence itself. In the case of this residential tenancy agreement, I find that parking is not essential. In fact, in this case, the tenant agreed to the landlord revoking his use of the parking area. The unauthorized washing machine was removable and removed: it was not an essential part of the space and while its presence created a flooding incident, I find that it does not have a determinative impact on the tenancy in that it was able to be removed. Again, the tenant agreed to remove it. I find, as stated above that there is no evidence sufficient to show that the tenant has either placed garbage in the stairwells or stained the common area floors. Therefore, I will not discuss how these items fail to meet the standard of a term or consideration material to the tenancy.

The landlord also provided submissions that the tenant breached material terms and failed to address them in a reasonable period of time. I have not found that any of the actions of the tenant resulted in a breach of material terms. I note however that if I had found these breaches were material, I further find that the tenant corrected these issues, including the removal of the washing machine, within a reasonable period of time in all of the circumstances.

Based on all of the evidence provided at this hearing and the lack of documentary or other evidence submitted on behalf of the landlord, I am not satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant has made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice seeking to cancel the notice to end tenancy. In all of the circumstances, I find that the notice to end tenancy should be cancelled. As the 1 Month Notice will be cancelled, the tenancy will continue.

Conclusion

I dismiss the landlord's application for an order of possession and recovery of the filing fee.

I grant the tenant's application to cancel the notice to end tenancy. The tenancy continues.

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: August 4, 2015

Residential Tenancy Branch

