



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") 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 did not attend this hearing, although I waited until 11:15 am in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 am. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. She testified that she personally served the tenant with the 1 Month Notice to End Tenancy for Cause on May 11, 2015.

The landlord also testified that the tenant was served with the landlord's Application for Dispute Resolution by registered mail on July 3, 2015. The landlord provided the Canada Post tracking number and testified that the package had been returned "unclaimed" however she did not submit copies of the receipts from Canada Post. The landlord provided sworn testimony that the package was sent to the rental unit address and that the tenant continues to reside in the rental unit. Based on the sworn and detailed testimony regarding service provided by the landlord, I find the tenant deemed served with the landlord's Application for Dispute Resolution on July 8, 2015, 5 days after its registered mailing.

Issues to be Decided

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

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

Background and Evidence

The landlord's representative ("the landlord") testified that no written tenancy agreement was created with respect to this tenancy. She testified that she believed, *without* certainty that the tenancy began on July 1, 2014 and that, at that time the tenant paid a \$200.00 security deposit to the landlord. She testified that she believes the landlord still holds this deposit. She testified that the rental amount of \$400.00 is payable on the first of each month.

The landlord sought an Order of Possession. She testified that, "we just want [the tenant] out". In her application for dispute resolution, she wrote,

damage to the property by fire which has [jeopardized] safety of other tenants, no regard for other tenants regarding noise, threats from tenant[s] guests, taken over part of backyard which was not included in rent asked numerous times to move accumulation of garbage from side & back area. Would like to recover \$50 from deposit for this application.

In her testimony at this hearing the landlord testified that the tenant is "just causing problems". She testified that he has different people over to his rental unit and that he disturbs other tenants. She testified that there was "quite the fire" between two basement doors recently and that the tenant is noisy, playing loud music regularly. She testified that the tenant has been asked numerous times to be less noisy, turn down his music and that he ignores what other people have to say.

The landlord testified that, even though it is not part of the common property and is reserved for the upstairs tenants, the tenant constantly spends time in the backyard with his noisy friends.

The landlord testified that she could supply photographic evidence of the damage she claims the tenant has done to the yard and the mess that he leaves after parties. She did not submit any documentary or photographic evidence in support of her application beyond a copy of the 1 Month Notice to End Tenancy. In this case, the landlord provided several grounds for cause including;

- *Tenant has allowed an unreasonable number of occupants in the unit/site*
- *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,*
- *Tenant has engaged in illegal activity that has, or is likely to:*
 - *damage the landlord's property;*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *Tenant has caused extraordinary damage to the unit/site or property/park....*

Analysis

When seeking an Order of Possession, a landlord is required to prove on a balance of probabilities that the tenant has acted in the manner described in the notice to end tenancy. I note that the tenant has not made application to dispute the 1 Month Notice pursuant to section 47(4) of the *Act* within ten days of receipt. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days may lead to the end of this tenancy on the effective date of the notice. If the landlord shows on a balance of probabilities that the tenant has acted in the manner described in the notice to end tenancy, the tenant would be required to vacate the premises.

The landlord has testified that the tenant allows an unreasonable number of occupants in his suite. She provided general statements to this effect but did not provide any specific details or any documentary evidence with respect to this alleged issue.

The landlord testified that the tenant or his guests often disturb other occupants with; partying in the backyard, loud music; and general noise. She again provided general statements to this nature with no specific examples of the tenant's behaviour. Nor did the landlord provide any complaints from other tenants or other documentary evidence to support the claim that the tenant disturbs the other tenants in a significant way.

The landlord testified that the tenant has jeopardized the health or safety of the other tenants as well as the landlord's property by starting a fire. Again, she stated this fact in her testimony. The landlord did not provide dates or details in general or specific documents relating to a fire at the premises. She presented no evidence to indicate that the tenant was in fact responsible for a fire or any damage that may have resulted from a fire.

The landlord presented no evidence that the tenant has engaged in illegal activity in her testimony or in the form of any evidence.

Based on the evidence provided by the landlord solely in the form of testimony at this hearing, I do not find that there is sufficient evidence to justify an end to this tenancy. I dismiss the landlord's application for an Order of Possession for Cause. And, as the landlord was unsuccessful in her application, I find that the landlord is not entitled to recover her filing fee for this application.

Conclusion

I dismiss the landlord's application in its entirety.

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: September 03, 2015

Residential Tenancy Branch

