



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bay Street Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, O

Introduction

This is an application brought by the Landlord(s) requesting an Order of Possession based on a mutual agreement reached in the previous arbitration hearing and a request for recovery of the filing fee..

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

Issue(s) to be Decided

The issue is whether or not the landlord has the right to an Order of Possession and recovery of the filing fee.

Background and Evidence

The dispute resolution hearing was held on August 31, 2015 and at that hearing the parties came to the following mutual agreement:

1. the tenant and landlord agree that **this tenancy will end on or about September 15, 2015** at the time that a different rental unit - unit #213 - on the same residential property, at a reduced rent; **or**, a different unit within the same residential property mutually agreed by the parties, is ready for occupation by the tenant, and,
2. the landlord agrees that until such time as the tenant vacates the current rental unit **the landlord of this matter will not smoke on their balcony.**

Further in the conclusion of the Arbitrator's decision, the arbitrator stated:

This Decision and Settlement Agreement is final and binding on both parties.

The landlord testified that even though they prepared unit #213 for the tenants, the tenants refused to occupy that unit.

The landlord further testified that the unit was thoroughly cleaned, the carpets were professionally cleaned, and the unit was painting with an odor blocking paint to ensure that the unit would be satisfactory for the tenants.

Landlord further testified that she even contacted the people living in the suite below #213 and got their agreement to not smoke on their balcony so that smoke would not enter the new rental unit.

The landlord further testified that she has provided evidence and statements that show that this rental unit had no smoke odor, even a statement from the carpet cleaner.

The landlord is therefore arguing that they have completely complied with the terms of the mutual agreement and the tenant has failed to comply by vacating the rental unit and therefore they are requesting an Order of Possession.

The tenant testified that she was never informed that unit #213 had been previously occupied by a smoker and when she viewed the unit after the landlord had finish cleaning and painting the unit she could still smell smoke, and, for health reasons, she made the decision that she cannot move into this rental unit.

The tenant further testified that during the original hearing, when it was agreed that unit #213 would be made available, the landlord did not mention that it was occupied by a smoker, and had she done so she would never have agreed to move into the rental unit.

The landlord testified that the reason that it was not mentioned that the previous occupant was a smoker was that he never smoked in the rental unit, and all smoking was always done on the outside patio.

Analysis

The tenant is alleging that she did not move into unit #213 because, even after the landlord prepared the unit, it still had a smoke smell; however it is my finding that the tenant has not met the burden of proving that claim. The tenant has provided no supporting evidence to corroborate her claim that the rental unit had a smoke smell after the landlord had prepared the unit.

On the other hand, the landlord has provided evidence that convinces me that this rental unit did not have a smoke smell once the unit had been cleaned, carpets had been cleaned, and the unit had been painted. The carpet cleaners invoice states no

odor-only paint odor, and the landlord has provided a witness statement in which the witness states that the rental unit smelled fresh and was ready to rent.

It is my decision therefore that the tenant has failed to comply with the terms of the mutual agreement, and therefore the landlord has the right to an Order of Possession.

Since the tenant has paid rent for use and occupancy only to the end of November I will be issuing an Order of Possession for the last day of November 2015.

I also allow the landlords request for recovery of the filing fee.

Conclusion

Pursuant to section 55 of the Residential Tenancy Act, I have issued an Order of Possession for 1:00 p.m. on November 30, 2015.

I have also issued an order for the tenant to pay \$50.00 to the landlord to cover the cost of the filing fee.

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: November 19, 2015

Residential Tenancy Branch

