



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FATHER DELESTRE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Preliminary Issues

The parties confirmed the respondent named on the Tenant's application was an employee or Agent of the corporate Landlord, as listed on the 1 Month Notice to end tenancy. Accordingly, the style of cause was amended to include the corporate Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on November 3, 2015. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause and to recover the cost of his filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by four agents for the Landlord, the Tenant, and the Tenant's Advocate. Each person who submitted testimony gave affirmed testimony.

There was more than one person representing both the corporate Landlord and the Tenant. Therefore, for the remainder of this decision terms or references to the Landlord or Tenant importing the plural shall include the singular and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On December 17, 2015 the Tenant submitted 44 pages of evidence and on December 30, 2015 the Tenant submitted an additional 3 pages of evidence to the Residential Tenancy Branch (RTB). The Tenant affirmed that he served the Landlord with copies of the same documents that he had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's relevant submissions as evidence for these proceedings.

On November 30, 2015 the Landlord submitted 37 pages of evidence to the RTB. The Landlord affirmed that he served the Tenant with copies of the same documents that he had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's relevant submissions as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Although I have considered all relevant submissions not all of them are listed in the summary below.

Issue(s) to be Decided

1. Should the 1 Month Notice issued October 16, 2015 be cancelled or upheld?
2. If upheld, did the Landlord make an oral request for an Order of Possession?

Background and Evidence

The parties entered into a written tenancy agreement that began on August 1, 2013. The rent is subsidized and the current amount of \$293.00 is payable on or before the first of each month. On or around August 1, 2013 the Tenant paid \$492.00 as the security deposit which was based on market value rent.

The Landlords submitted evidence that on the morning of October 16, 2015 they were advised by another tenant, who resides in the unit directly below the Tenant's unit, that she had been away and when she attended her unit that morning she found there had been a flood in her unit. When the Landlords inspected the lower tenant's unit the Landlords found the ceiling to be soaking wet and water was dripping from the ceiling and around the sprinklers.

The Landlords and the lower tenant's boyfriend attempted to gain entry into the Tenant's rental unit. They had knocked and yelled but there was no answer so they used their key and unlocked the door; however, the door would not open because the Tenant had installed a sliding lock near the top of the door. The Landlords were able to break open the door. The Tenant was found asleep in his bedroom and when woken up he told the Landlord the flood occurred the night before and said he was sorry.

It was October 15, 2015 at approximately 6:15 to 6:30 p.m. when the Tenant arrived home from work, plugged in the tub and turned the water on to fill the tub in preparation to take a bath. The Tenant's brother called stating he was having a medical emergency and the Tenant left the apartment leaving the water running in the tub.

The Landlord testified that the Tenant did not tell them what time he turned the water, when he left, or when he came back. He said the Tenant simply said that he was sorry. The Landlord asserted that the Tenant caused damage in his unit and in the lower unit due to his negligence. The Tenant was neglectful of his actions causing damage to the building and causing distress to other people who live in the building. As a result they decided to evict the Tenant and posted the 1 Month Notice to his door on the afternoon of October 16, 2015.

The 1 Month Notice was issued October 16, 2015 pursuant to Section 47(1) of the Act listing an effective date of November 30, 2015 for the following reason(s):

- Tenant has caused extraordinary damage to the unit/site or property/park

The Tenant testified and confirmed that he had left the rental unit while the water was still running into the tub. When he returned home sometime that evening and entered into his apartment about 3 feet he noticed water on his feet. He quickly went to the tub to turn the water off and grabbed blankets to soak up the water. He stated that it did not look so good and he did not know what else he could do with such a small mop. So he left the apartment and went to a mall where he used to work to see if he could borrow some larger industrial equipment. When he could not find anyone he went back to the apartment and continued cleaning. When he did what he could do with blankets and small mops he went to bed.

The Tenant submitted that at some time during the evening he had gone downstairs to check on the lower tenant but it was dark so he thought no one was home. He then stated that he thought the water had been contained to the hard floor surfaces only. The Tenant stated that the water had also soaked into the edge of his carpet but had primarily run into his kitchen. He said he could not recall the timeframes for when each of these events took place that evening.

In his November 27, 2015 written submission the Tenant stated that it took approximately 15 to 20 minutes to fill the tub and that he had intended on checking the tub in about 10 minutes. Then his brother called with a medical emergency and he left.

In his December 1, 2015 written submission, the Tenant's brother stated that the Tenant arrived at his apartment approximately 10 minutes after he had called and that he stayed there for "about two hours".

The Tenant submitted that the Landlord had not posted emergency contact telephone numbers in the building. He stated that he used to have the Landlord's contact number

programed into his phone; however, he had recently changed phones and no longer had that number. He asserted that he could not contact the Landlord without there being an emergency or after hour telephone number posted in the building. He then stated that numbers have been mysteriously posted by the elevator since this event.

The Landlord confirmed that they did not have emergency numbers posted in October and they still do not have numbers posted so nothing has mysteriously appeared as suggested by the Tenant. He argued that the Tenant had been given a package of documents with all their contact numbers when he first signed his tenancy agreement. That package also included after hour numbers so he ought to have called the Landlord when the flood first occurred to try and limit the amount of damage.

The Tenant submitted that he and his brother have been trying to resolve this issue with the Landlord ever since he was served the 1 Month Notice. The Tenant said he tried to explain how sorry he was that this flood happened and tried to resolve the issues with the Landlord. However, the Landlord simply refused to resolve the issues and kept telling him he was evicted. The Tenant attempted to settle these matters again during the hearing and offered to work out a payment plan to be paid to the lower tenant to cover some of her losses.

The Landlord declined the offer to settle during the hearing and said that they were proceeding with the eviction. Upon further clarification the Landlord stated that they wanted an Order of Possession to proceed with the eviction effective February 1, 2016.

Analysis

Upon review of the 1 Month Notice to End Tenancy I find that it was served upon the Tenant in a manner that complies with section 88 of the Act. The form and content of the Notice was issued in accordance with section 52 of the *Act*.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Section 47(1)(f) of the *Act* stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed facts were the Tenant left the water running into a plugged bathtub while he left the rental unit for a period of two or more hours which caused a flood in his rental unit and the unit below. Given the amount of time the unit was left unattended, I conclude that the flood and damage would have occurred even if the Landlord had emergency numbers posted. Although, the damage may not have been as extensive if the Landlord had been contacted sooner. That being said, if the Tenant was truly intending to contact the Landlord he could have checked with other occupants in the building to see if they had the Landlord's contact information.

In light of the above, I find the landlord has satisfied me that the Tenant has caused extraordinary damage to a rental unit or residential property, as indicated on the Notice to End Tenancy. Therefore, I uphold the Notice to End Tenancy based upon this reason and I dismiss the Tenant's application for cancellation of the Notice.

The Tenant was not successful with their application; therefore, I decline to award recovery of the filing fee.

With respect to the Landlord's oral request for an Order of Possession, section 55 of the Act provides that an Order of Possession shall be granted to a landlord where the tenant files to cancel a notice to End Tenancy and the application is dismissed; and, the landlord orally requests an Order of Possession during the scheduled hearing.

I find the above criteria have been met and I grant the Landlord's request for an Order of Possession. Provided to the landlord with this decision is an Order of Possession effective **February 1, 2016** after service upon the Tenant.

Conclusion

The Tenant was not successful and his application was dismissed. The Landlord's oral request for an Order of Possession was granted effective February 1, 2016.

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: January 06, 2016

Residential Tenancy Branch

