



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 33 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application and the landlord was duly served with the tenant's written evidence package.

During the hearing, the landlord confirmed that he did not wish to rely on or for me to consider the landlord's written evidence package at this hearing or in my decision because he had served it to the tenant and the Residential Tenancy Branch ("RTB") late, on the day before this hearing.

The tenant confirmed receipt of the landlord's 1 Month Notice to End Tenancy for Cause, dated March 31, 2016 ("1 Month Notice") on the same date. The notice has an effective move-out date of May 1, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

At the outset of the hearing, the landlord confirmed that he had applied for “other unspecified remedies” in error. Accordingly, this portion of the landlord’s Application is dismissed without leave to reapply.

Issues to be Decided

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

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the tenant’s documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord’s claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on March 1, 2015. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlord seeks \$850.00 for June 2016 rent from the tenant. Both parties agreed that the tenant owes this amount because the landlord refused to accept the tenant’s rent payment. The landlord also seeks to recover the \$100.00 filing fee paid for this Application.

The landlord seeks an order of possession based on the 1 Month Notice, which was issued for the following reason:

- *Tenant or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*

Both parties agreed that they attended a previous hearing at the RTB on March 17, 2016, after which a decision, dated March 18, 2016, was issued by another Arbitrator. The file number for the previous hearing appears on the front page of this decision. At the previous hearing, the tenant disputed the landlord’s 1 Month Notice, dated February 1, 2016, which was regarding complaints and laundry issues with the main floor tenants, who live above the tenant.

The landlord said that the tenant has had issues with the main floor tenants and the basement tenants living next door to the tenant. He stated that the fighting has been ongoing for some time. He indicated that he does not know who is at fault but he wants the tenant to leave the unit. The landlord explained that the basement tenants have called the police twice regarding the tenant since the February 2016 1 Month Notice from the previous hearing was issued. He maintained that the police will not give him any information about these disputes. He confirmed that the same issues as the previous notice are still occurring.

The tenant disputes the landlord's 1 Month Notice, indicating that the landlords are re-arguing the same issues that were already decided at the previous RTB hearing. He said that the two police calls were made after the landlord issued the 1 Month Notice to him on March 31, 2016. The tenant explained that the first call was made approximately one month prior to this hearing regarding issues with his basement neighbour. The tenant confirmed that the second call was made on the day before this hearing, regarding the same neighbour threatening his sister. The tenant said that he has no issues with the main floor tenants, as these have resolved.

Analysis

I find that the landlord is attempting to re-argue issues regarding disputes with the main floor tenants that were dealt with at the previous hearing on March 17, 2016. Therefore, the issues are *res judicata*, meaning that they have already been decided by the Arbitrator at the previous hearing. I cannot overturn or modify that decision.

Regarding any new issues with the main floor tenants since the previous hearing on March 17, 2016, I accept the tenant's testimony that the issues have now resolved, as the landlord agreed that the main disputes now involve the basement tenants.

I find that at the time the landlord issued the 1 Month Notice on March 31, 2016, there may have been disputes between the tenant and the basement tenants but the landlord was unable to provide any specific details. Further, the two police calls were initiated after the 1 Month Notice was issued to the tenant. Both the basement tenants and the tenant in this proceeding made these calls in order to protect and enforce their rights. I find that the landlord failed to show that the above issues amounted to significant interference or unreasonable disturbance.

On a balance of probabilities and for the reasons stated above, I dismiss the landlord's application for an order of possession based on the 1 Month Notice. The landlord's 1

Month Notice, dated March 31, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As both parties agreed that the tenant owes rent of \$850.00 for June 2016, I issue a monetary order to the landlord for that amount. During the hearing, I cautioned the landlord that he cannot refuse to accept rent from the tenant.

As the landlord was mainly unsuccessful in this Application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$850.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's Application is dismissed without leave to reapply.

The landlord's 1 Month Notice, dated March 31, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 10, 2016

Residential Tenancy Branch