



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUME INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF

Introduction:

Both parties made applications and attended the hearing. The Notice to End Tenancy is dated August 24, 2016 to be effective September 30, 2016 and the tenant confirmed it was served by posting it on the door. The tenant served his Application to Dispute on August 29, 2016 and the landlord served their Application by registered mail on September 27, 2016. The tenant contended the landlord did not serve their Application by registered mail and he found it posted on his door. The Canada Post website shows it was delivered on September 28, 2016 to the tenant's residence. I find the weight of the evidence is that the documents were served according to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- (a) For an Order of Possession pursuant to sections 47 and 55;
- (b) For a Monetary Order for damages to the premises; and
- (c) To recover the filing fee.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) to cancel a notice to end tenancy for cause pursuant to section 47;

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief?

Has the landlord proved on a balance of probabilities that they are entitled to a monetary order to compensate for damages caused by the tenant or his guests?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced November 17, 2015, it is now a month to month tenancy, rent is \$540 a

month and a security deposit of \$270 was paid in November 2015. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the premises by the tenant
 - (i) has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- b) The tenant has caused extraordinary damage to the unit.

The landlord provided four letters and a witness to give oral evidence. The witness said she was scared to do it but felt she had to because of the significant disturbance caused by this tenant or persons he permits on the property. She has personally witnessed multiple drug deals, people going in and out of his unit all day and all night and the tenant arranging to have the door propped open so his visitors can easily enter and leave. She said she uses the exit door near his unit so has seen all these things and the tenant seems proud of the fact of drug dealing. She said that as she exited she found a frequent guest of this tenant sleeping in the stairwell who told her "my buddy in the wheelchair isn't answering his door". She says she has also been cussed by the tenant.

Another tenant in his letter complains about a pit bull being tethered outside the tenant's unit and threatening him. A man inside the subject tenant's unit came to the window and threatened him also. The letter also records that less than 24 hours previously Police with assault weapons had surrounded the building so they could enter the subject tenant's suite. He says he is extremely concerned about his safety and that of the other residents.

Another tenant records numerous loud music complaints about this tenant's unit and said he is not paying July rent because of it.

The tenant denies the people causing problems are invited on the property by him. He says he is a quadriplegic and could not have done the damage alleged by the landlord. He denies he significantly disturbs the peaceful enjoyment of other residents and does not invite guests who do. He provided a typewritten statement that he invited other residents to sign saying they are residents of the building and have not experienced any excessive noise or disturbances from this tenant. Two of them subsequently retracted these statements and one said she had just now seen the damage and noted the drug use and selling problems.

The landlord also asks for compensation for fixing two broken windows and the door. A witness for the tenant said there was only minor door damage. The landlord provided photographs of the damage and said they had to replace it when the tenant leaves.

They said it is secure for there is a lock but the damage is beyond cosmetic and it needs replacing. The tenant repeated many times there is no proof that he did this damage or that he invited persons who did it.

Included with the evidence is the Notice to End Tenancy, many letters, invoices, and photographs. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I have carefully considered all the documents and oral evidence although not all are noted in this Decision. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that he or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Although the tenant said there was no proof that he permitted certain persons causing disturbances on the premises, I find the statements of other tenants more credible when they note a person sleeping in the hallway said she was visiting the tenant and the man with the pit bull was inside his unit. The Act does not require proof beyond a reasonable doubt as in criminal charges. I find the weight of the evidence on the balance of probabilities is that the landlord has good cause to end this tenancy. The tenant's Application to cancel the Notice is dismissed. An Order of Possession is issued to the landlord effective November 30, 2016 as requested.

In respect to the landlord's claim for a monetary order for costs of repair, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the weight of the evidence is that the tenant caused damage to the unit. He did not deny he or his guests had broken two windows. I find the landlord entitled to compensation of \$408.52 for window repair as invoiced by the third party.

The landlord filed an Amendment on October 20, 2016, claiming an additional \$1,141.26 for door repair. The tenant said neither he nor his guests had broken the door. The landlord was unable to provide any further information as to how the door was broken. They said they heard a loud bang and found the door broken in August. The photograph shows the wood around the door locks is broken and cracked. I find the Amendment was filed too late for this hearing. The Residential Tenancy Branch Rules of Procedure 4.6 provides that an Amendment and supporting documents must be received by the respondent not less than 14 days before the hearing. I find the tenant did not receive this amendment in time to adequately respond to it. I dismiss the claim of the landlord for the cost of door repair and give them leave to reapply for this cost with sufficient evidence.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed with no recovery of filing fees as they were waived. The tenancy was at an end on September 30, 2016. An Order of Possession is issued to the landlord effective November 30, 2016 as requested by the landlord.

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for their application.

Broken window	196.00
Broken window	212.52
Filing fee	100.00
Total Monetary Order to Landlord	508.52

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: October 26, 2016

Residential Tenancy Branch