



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application for dispute resolution package via courier. In accordance with the Residential Tenancy Branch Temporary Order that allows service of documents by courier, I find that the landlord was sufficiently served with the application. The landlord confirmed that he did not submit any documentary evidence for this hearing.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Background and Evidence

The parties testified that the landlord assumed this tenancy in December 2010, when the landlord purchased the property from the previous landlord. The tenant estimated that the tenancy commenced sometime in 2008. The parties agreed rent in the amount of \$500.00 is payable on the first of each month. A security deposit of \$250.00 was remitted by the tenant at the start of his tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated October 15, 2016, by way of posting to the rental unit door. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at risk

The landlord testified that throughout the tenancy the tenant has on four occasions flooded his bathtub which resulted in water affecting the downstairs commercial tenants. The landlord indicated the first three incidents were relatively minor however the last incident that occurred on May 17, 2016 was more substantial and required the services of a restoration company.

The tenant testified that he has flooded his bathtub a total of three times, not four and all previous damages were repaired and cleaned by him. The tenant testified that he offered to repair the lasted damage by the May 17, 2016 flood however the landlord declined and obtained the services of a restoration company.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or the tenant or a person permitted on the property by the tenant has put the landlord's property at risk. The onus is on the landlord to prove the reasons behind the notice. The landlord provided evidence in the form of testimony.

The tenant does not dispute he flooded his bathtub on at least three occasions. The requirement of a professional restoration company indicates the most recent flood was significant. In the absence of evidence to show the contrary I find the tenant was negligent by allowing his bathtub to overflow which thereby put the landlord's property, specifically the downstairs commercial tenants, at risk. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the

Act provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenant's application has been dismissed I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective **November 30, 2016 at 1:00 p.m.**

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 17, 2016

Residential Tenancy Branch