



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction:

Only the landlord attended and gave sworn testimony that a Notice to End Tenancy dated September 29, 2016 to be effective October 31, 2016 was served September 30, 2016 by posting it on the tenant's door and the Application was served in person and by registered mail. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The Notice is deemed to be served on October 2, 2016 pursuant to section 90 of the Act as it was posted on the door. The effective date on the Notice then is automatically corrected to October 31, 2016 pursuant to section 53 of the Act as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 as the tenant has significantly disturbed and interfered with the reasonable enjoyment of other tenants;
- b) A Monetary Order for unpaid rent;
- c) To retain the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant commenced living in the premises August 1, 2016, a security deposit of \$250 was paid and rent is currently \$500 a month. The landlord said the tenant owes \$500 for rent and requests an amendment to the application to retain the security deposit to offset the amount owing.

The Notice to End Tenancy was served for cause, namely that the tenant is significantly interfering and unreasonably disturbing other tenants. The landlord submitted several letters from other tenants detailing how the tenant plays loud music, uses the washer

and bangs and yells even in the early hours of the morning. They say they also fear for their safety for he leaves a stove on to light his cigarettes, he took the battery out of the fire alarm and has an illegal stove in his room which could cause fire in the premises. Some of them fear him for he threatens them and said he was installing a spy camera to watch their behaviour. He also will not take direction on where to park his car and has damaged the lawn. The landlord said she can't sleep because of the emergency calls she receives from other tenants about his behaviour.

The landlord also said he breached a material term of his tenancy agreement by not vacating on October 31, 2016. It was a fixed term tenancy with expiry of October 31, 2016.

In evidence are letters from tenants, the tenancy agreement, photographs and proof of service. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective two days from service. Furthermore, I find the weight of the evidence is that the landlord had good cause to end this tenancy as the tenant was significantly interfering with the reasonable enjoyment of other tenants with his noise and unsafe actions.

In respect to the breach of a material term of the lease, I pointed out to the landlord that she failed to have the tenant initial the box in clause 2 of the lease where the tenant agrees to move out at the end of the fixed term. Therefore this would not have been cause to end the tenancy.

Monetary Order

I find that there are rental arrears in the amount of \$500. The amendment to retain the security deposit to offset the amount owing is granted.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the

security deposit to offset the rental amount owing and to recover filing fees paid for this application.

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|-----------------------------|---------------|
| Rental arrears | 500.00 |
| Filing fee | 100.00 |
| Less security deposit | -250.00 |
| Total Monetary Order | 350.00 |

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 30, 2016

Residential Tenancy Branch