



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

Both parties and a witness attended the hearing and gave sworn testimony. The Notice to End Tenancy is dated February 20, 2017 to be effective April 16, 2017. The effective date on the Notice is automatically corrected to April 30, 2017 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The landlord stated he served the Notice to End Tenancy personally and the tenant /applicant gave evidence that they personally served the Application for Dispute Resolution. Both parties agreed they were served as stated. I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To recover the filing fee for this Application.

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? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

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 April 16, 2016, rent is \$800 a month and a security deposit of \$400 was paid. The landlord leased the whole home from a head landlord, "A", and sublet the downstairs unit to this tenant. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the property by the tenant has:
 - i. seriously jeopardized the health, safety or lawful right of another occupant or the landlord.
 - ii. Put the landlord's property at significant risk.

The landlord said there was a fire in July 2016 and a side of the home near the tenant's entrance was burned. He said the tenant's boyfriend said he had been smoking there about 3 hours before and the firemen said the fire was likely caused by a cigarette butt smoldering for hours. He said they have cousins who visit upstairs and others who smoke but no one was there on the Wednesday when the fire started. His visitors usually come on weekends. He also said that the fire started near where the tenant's smoke and his guests would not be smoking there.

The tenant's boyfriend said that the fire started in some old building material that should have been removed for it partly blocked the tenant's access. He agreed he was smoking in that area about 3 hours before the fire but said he put it out in a can as he told the firemen. He said a coach house tenant had passed that way and smelled no smoke an hour prior to the fire and after he had been smoking. There was no evidence from the coach house tenant provided for the hearing. The tenant said she was never formally asked to pay for the \$1000 deductible for the damage. She said she was lied to for the owner said he would not evict her. The owner did not attend the hearing to give evidence. She does not want to pay the \$1000 to prevent the end of her tenancy.

The landlord provided evidence on the USB drive texts, that he had paid the owner \$1000 to avoid his tenancy being ended. He made a proposal to his tenant but she did not agree. He requests an Order of Possession and if possible, a monetary order to recover the \$1000.

The landlord provided a USB in evidence showing photographs of the burned side of the home with some old lumber underneath, photographs of cigarette butts near the entrance to the tenant's unit and a number of emails. In evidence is also a copy of the Notice to End Tenancy and a receipt for the filing fee.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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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 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 she or a person permitted on the property by her has seriously jeopardized the health and safety of other occupants and the landlord and put the landlord's property at significant risk.

I find the weight of the evidence is that smoking by her or her boyfriend resulted in one or more cigarette butts that ignited some old lumber and set the side of the house on fire. The landlord's evidence is supported by photographs that show the burned side of the house near the tenant entrance with butts near the tenant entrance. I find the boyfriend's evidence also supports the landlord's testimony as he agreed he was smoking in that area about 3 hours prior. I find insufficient evidence to support the tenant's contention that one of the landlord's guests may have caused the fire. I find the emails or texts in evidence contain no denials by the tenant at the time that the smoking caused the fire. The tenant texted when confronted with the claim, "I won't smoke anymore. I don't think he can make any of us pay the \$1000".

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on April 30, 2017 as automatically corrected under section 53 of the Act. The tenant enquired about continued rent. I advised her that the landlord is entitled to collect rent for her "use and occupation only" while she continues to live there.

While the landlord may be entitled to a monetary order for \$1000 and to retain the tenant's security deposit to offset the amount owing, I find I have no jurisdiction to award this to him on the tenant application. The landlord must bring his own application to recover money owed to him. The parties are advised to read and consider section 38 of the Act in respect to dealing with the security deposit as there is a strict time limitation.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed without recovery of the filing fee due to lack of success. The tenancy is at an end on April 30, 2017 (as corrected). An Order of Possession is issued to the landlord effective April 30, 2017.

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: March 22, 2017

Residential Tenancy Branch