



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC MNDC MNSD FF

Introduction:

Both parties attended and the tenant agreed she received the Notice to end Tenancy dated May 27, 2017 to be effective July 1, 2017 posted on her door. Both parties agreed they received their respective Applications for Dispute Resolution one by registered mail and one by regular mail. I find that the parties were sufficiently served with the documents according to sections 71, 88 and 89 of the Act. 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 for cause;
- b) A Monetary Order for damage and unpaid strata fines pursuant to sections 7 and 67; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Act for orders as follows:

- d) To cancel a Notice to End Tenancy for cause.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Has the landlord proved that money is owed and the amount and are they entitled to recover the filing fee?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 1, 2015, a security deposit of \$750 was paid and rent is currently \$1500 a month.

The landlord provided a series of letters from the strata stating complaints about the tenant's behaviour and issuing fines. In evidence is a copy of the Strata Bylaws and a

Form K signed by the tenant agreeing to abide by them. A One Month Notice to End Tenancy was issued on May 27, 2017 stating that the tenant or a person permitted on the property by them has:

- a) Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- b) Seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

In support of these reasons, the landlord provided letters from the strata as follows:

October 5, 2016 noting

- (i) April 13, 2016: stomping around and banging after 11 p.m.
- (ii) April 17, 2016: laundry started at 11:55 p.m.
- (iii) June 1 and 6: vacuuming after midnight, 3 a.m. walking and doing laundry, stomping at 2:24a.m.
- (iv) June 11: loud stomping 3-4:30 a.m. and drawers slamming in master bedroom
- (v) June 12: trying on heeled shoes and dropping items 12:30a.m. - and later till 2 a.m.

This letter continues detailing similar incidents throughout July 2016 (13 incidents) and August 2016 (4 incidents) and September 2016 (5 incidents). The letter details how this behaviour violates Bylaw 3 and sets out possible fines. The landlord notified the tenant of this letter and asked her to cease being a nuisance to others or he may be forced to issue an eviction notice. The landlord notified her of another complaint letter dated October 21, 2017 and asked her to respond as she had a right to request a Strata Council hearing. Photographs of garbage dropped from the balcony are included. The tenant agreed she dropped garbage from the balcony to her room mate because it was leaking and she did not want to soil the hall carpets.

On October 28, 2016 a similar letter was sent to the landlord concerning the tenant's behaviour. It contains similar allegations of noise disturbance (about 14 incidents including setting off the smoke alarm at 11:55 p.m. and 12:02 a.m. on October 4, 2016. The strata letter said a fine of \$200 was being levied. A letter dated October 24, 2016 detailed a further complaint of garbage being thrown off the deck and deck washing by dumping large amounts of soapy water causing dirty water to land on other decks. The letter advised the Strata might enact the Division 3, Bylaw Enforcement 138(1) and (2) of the *Strata Property Act* to evict the tenant.

A letter dated January 24, 2017 advised the landlord that the Council had reconsidered the charges assessed against his strata lot and his request was denied. They reviewed

the tapes and found it showed the male friend of the tenant's room mate kicked the glass upon exiting into the parking garage. They note that the tenant had attended a hearing before them and although she said she was not aware of certain bylaws, she took responsibility for throwing garbage off the deck, dumping soapy water causing fallout to the deck below and using the washing machine several times late at night. They said fines would be levied.

On May 23, 2017, a letter was sent to the landlord by the Strata. It noted they were doing their annual site walk and noted extreme music blaring from the unit on May 17, 2017 at 6:45 p.m. which could be heard throughout the neighbourhood. They had previously given the tenant one more chance and now have unanimously agreed to enact section 138(1) and request eviction of the tenant. The landlord issued the Notice to End Tenancy on May 27, 2017.

The tenant asked to cancel the Notice. She said the persons living below her were members of the Council and were unreasonable in making noise complaints as the tenants and friends never wear shoes after 10 p.m. She said there were no complaints after those persons moved. The landlord said the owner below had complained, he moved out and rented his unit to a person who works late shift so that is why the noise complaints stopped during the night. The tenant said the landlord had no proof that the male friend broke the glass in the door. The landlord pointed to the letter from council where they had reviewed the video at his request and saw the male causing the damage.

The landlord requests compensation for the fines and to fix the broken glass in the amount of \$578.90. A detailed invoice is enclosed. On the basis of the 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. Although the tenant contended there was no proof of these bylaw infractions as the Police were never called, I find the weight of the evidence is that she, her room mate and guests were significantly interfering with or unreasonably disturbing another occupant or the landlord and seriously jeopardized the health, safety or lawful right of another occupant or the landlord. Although she contended this started when she accused the landlord of behaving inappropriately, I find the weight of the evidence is that the Strata was receiving the complaints and compelling the landlord to act on them. Whether or not he behaved inappropriately with her, I find insufficient evidence to support her contention

that the Strata complaints had anything to do with his actions. I find the landlord entitled to an Order of Possession. The landlord wanted the order effective as soon as possible. However, given the tenant is ill and spending time in hospital, I exercise my discretion to extend the time. An Order of Possession is issued effective September 15, 2017 as requested by the tenant.

Monetary Order

I find the weight of the evidence is that there is damage caused by the tenant's guest. I find the tenant liable for the cost of replacing door glass in the amount of \$270.90 and to reimburse the landlord for 3 fines totalling \$300. In total I find the landlord entitled to a monetary order for \$570.90. I find the tenant will be responsible for rent for September 1-15 (one half of one month) only if she vacates on or before September 15, 2017.

Conclusion:

I find the landlord is entitled to an Order of Possession effective September 15, 2017 and a monetary order as calculated below. I find the landlord is entitled to retain a portion of the security deposit to offset the amount owing and to recover filing fees paid for this application. The balance of the security deposit is to be dealt with in accordance with section 38 of the Act after the tenant vacates. I give the landlord leave to reapply within legislated time limits for further compensation if necessary.

I dismiss the Application of the Tenancy in its entirety without leave to reapply.

Calculation of Monetary Award:

Glass repair parkade door	270.90
Fines \$50+50+200	300.00
Filing fee	100.00
Less security deposit	-750.00
Balance in trust for tenant.	-79.10

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: August 08, 2017

Residential Tenancy Branch