



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC MNDC MNSD FF

Introduction:

Both parties (the landlord by representatives hereinafter called “the landlord”) attended and gave sworn testimony. The tenant agreed she received personally the One Month Notice to end Tenancy dated July 2, 2017 to be effective August 31, 2017. There was some disagreement about personal service of the landlord’s Application for Dispute Resolution on her. She did eventually find the Amendment in her paperwork and the witness testified that he was with the landlord and observed the Application and Amendment with evidence personally served on her. The tenant said she served her Application and the landlord acknowledged receipt. I find the parties were sufficiently served with the documents pursuant to my authority under section 71 and 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) An Order of Possession pursuant to Sections 47, and 55 for cause; and
- b) 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:

- c) To cancel a Notice to End Tenancy for cause; and
- d) To obtain a rent rebate and compensation for damages.

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? Are they entitled to recover the filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that she is entitled to a rent rebate and other compensation? If so, in what amount?

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 May 2013, rent is \$700 a month and no security deposit was paid. Several Notices to End Tenancy were served since May 2017 but the current Notice with which we are dealing in this hearing stated the following reasons for ending the tenancy;

1. The tenant or a person permitted on the property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - (ii) Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
2. The rental unit must be vacated to comply with a government order.

According to the evidence of the parties, they had a good relationship until about 6 months ago. In or about December 2016, the tenant was out of work and staying in the unit all day while she worked on her resumes to obtain a job for which she felt qualified. While at home, she noticed disagreeable odours and became very sick. She attended doctors who prescribed antibiotics but she still did not get better. One doctor suggested she move. The doctors had not observed her unit but said they thought her illness might be attributable to her living conditions based on what she told them.

She called the gas company (on suggestion of the landlord) to investigate the odour and possible CO₂, she called the Fire Department and Police also. She said the monitor she bought showed low levels of CO₂; the landlord said the Fire Department person had noted that her monitor was incorrectly calibrated and theirs showed no CO₂. A Fire Department report dated May 31, 2017 is included in evidence. It states the stove hood fan of the tenant was vented into the tool shed which houses various tools and cans filled with gasoline. It said the gas vapor migrates into the suite and they told the landlord who said he would re-route the vent that day. The tenant confirmed the landlord did that. As part of the ongoing official involvement, a Bylaw inspector came to the unit. He/she said the suite was not legal as it had no window in the bedroom so no secondary access. The landlord said they request an Order of Possession and they don't intend to rent it again. The landlord also detailed many quarrels with the tenant and the female landlord had to attend hospital twice with suspected heart issues. They

said it was very disturbing to have the tenant calling Police, the Fire Department, quarreling with them and following them to take photographs.

The tenant said she was never sick before but then said she noticed she was sick every Christmas. When staying home in December 2016, she got sick again with fever and headaches. After taking prescribed antibiotics, she did not get better so in February she tried to explore the reason. She noticed there was an odour in her apartment (a mild odour she said) so began exploring that by calling the fire department who called the City. She noticed she felt better outside. Her landlords said they smelt nothing. On May 28, 2017 when she noticed the gasoline smell, she slept in her hallway. She believes she is entitled to compensation as follows:

1. \$135 –for membership to a ski mountain.
2. \$95 – 75% of this as unable to use it due to illness
3. \$2730 –rent rebate – calculated as 65% of her rent from December to June
4. \$330 – for health supplements
5. \$300 –extra expense for food such as juicing and greens to help her recover
6. ?- loss of quiet enjoyment December to June 2017
7. ?- loss of work opportunity due to illness

The total monetary claim was listed as \$3395 but the tenant filed a late amendment (according to the landlord) changing it to \$4395. This evidence of the tenant was submitted too late and not received by me for the hearing. Therefore, I will not consider the late evidence.

In evidence are among other items, Notices to End Tenancy, doctors' notes, hospital reports, a Fire Department report and the result of the Bylaw Inspection, and statements of the parties and witnesses. 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. I find there is good cause to end the tenancy as the suite has been ordered closed by the City. While the landlord claims the tenant has caused unreasonable disturbance and affected their health, I find much of the evidence shows the landlord was engaged in disputes with her and not all the disturbance was attributable to her. However, her suite has been ordered to be closed so an Order of Possession is issued effective August 31, 2017.

In respect to the monetary claim of the tenant, 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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

I find section 32 of the *Act* requires the landlord to maintain the property in a suitable state for occupancy. I find the weight of the evidence is that the stove hood was incorrectly vented into the garage so gas vapor leaked into the unit. I find also the tenant's photographs persuasive that there was some dampness in the unit, maybe due to it being a basement suite. I find this odour and dampness significantly affected the tenant's reasonable enjoyment of the premises, especially as the landlords did not believe her and she was forced to contact outside authorities and quarrel with the landlords about it. I find the tenant entitled to a refund of 20% of her rent from December to June 2017 when the stove vent was rerouted and she says she suffered from the dampness. I find her entitled to compensation of \$1050. ($\$5250 (7 \times \$250) \times 20\%$)

In respect to her claims for the ski mountain membership and pass, I find insufficient evidence that the gasoline odour (which she said was mild) or dampness, if it existed, was affecting her health so she could not ski. I note the doctors found she had sinus and respiratory problems, possibly due to her home conditions but they had never inspected her home. I also note in **September** 2016, her evidence from the hospital states she has throat and sinus pressure/pain and was treated for acute sinusitis. The hospital notes she was seen by a doctor that week and told it was likely a virus. I find the weight of the evidence is that the tenant had an ongoing virus or bacterial infection of her sinuses beginning in September 2016 approximately so I find insufficient

evidence of causal connection between this illness and the odours or alleged dampness. I dismiss this portion of her claim.

In respect to her claim for health supplements and healthy food to help her recover, I find insufficient evidence of a causal relationship between the suite and her illness as I stated above. Therefore, I dismiss this portion of her claim.

In regard to her claim for lost work opportunities, I find insufficient evidence to support that she applied for or missed opportunities due to the problems in her unit. I dismiss this portion of her claim.

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Conclusion:

I find the landlord is entitled to an Order of Possession effective August 31, 2017 and to recover filing fees for this Application. The filing fee will be deducted from the monetary award to the tenant.

I find the tenant entitled to a monetary order as calculated below. No filing fee was paid so none is awarded.

Calculation of Monetary Award:

Refund of rent	1050.00
Filing fee to landlord	-100.00
Total Monetary Order to Tenant	950.00

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: August 09, 2017

Residential Tenancy Branch