



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 made Applications and both attended with witnesses and gave sworn evidence. The tenant agreed they received the One Month Notice to end Tenancy dated June 25, 2017 to be effective July 31, 2017 and the Application for Dispute Resolution personally. The landlord agreed the tenant served them with their Application personally. I find that the parties were legally served with the documents according to sections 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 of repeated late payment of rent and other causes;
- b) A Monetary Order for damages; 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;
- e) A Monetary Order for damages; and
- f) To recover the filing fee pursuant to section 72.

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 they are entitled to a monetary order for damages and to recover the filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities they are entitled to a monetary order for damages and to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. This was a very contentious hearing with the parties having to be reminded not to interrupt each other. It appeared the relationship had become very

toxic. The undisputed evidence is that the tenancy commenced December 5, 2016, a security deposit of \$750 was paid and rent is currently \$1500 a month. It is undisputed that the tenant has no rental arrears at this time.

The landlord claims the tenant is repeatedly late in paying rent. After two late payments on April 5, 2017 and May 7, 2017, they made an agreement on May 7, 2017 that the tenant could pay up to 4 days late to coincide with the male tenant's payday. The agreement also covered prohibition on complaints about hot water, dog droppings to be picked up within 12 hours and no more threats to each other. There are no rent receipts in evidence. Both parties claimed \$10,000 for alleged harassment and disturbance of their peaceful enjoyment contrary to section 28 of the Act. They submitted USBs, photographs and witness statements to prove their points.

After considering the documentary and other evidence and listening to their submissions, I asked if the tenants would like to settle the matter. The female tenant proposed a settlement as she said the relationship with the landlord was so bad that they wanted to leave. The landlord did not want to settle but after hearing his submissions, I advised him I found there was insufficient evidence for him to end the tenancy for cause. I found he had agreed to late payments of rent, he had no receipts, and I found there was equal evidence of him creating disturbances with the tenants. The USBs showed very angry exchanges with both parties engaging and with police being called and threats being made. At that point, the landlord said he wished to consider the settlement again as he recognized the relationship was toxic and hard on his family as well as the tenants.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

Settlement Agreement:

- 1. The parties agree the tenancy is at an end on September 30, 2017 and the landlord will receive an Order of Possession for that date.**
- 2. The parties agree the tenants will have free rent for September 2017 and the landlord may keep their security deposit.**
- 3. This agreement settles all matters on this tenancy between the parties to this date.**

These particulars comprise the full and final settlement of all aspects of this dispute to this time for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable, which settle all aspects of this dispute.

Analysis

Order of Possession

Based on the above noted settlement agreement, I find that the landlord is entitled to an Order of Possession effective September 30, 2017 and to keep the security deposit in lieu of rent for September. I find the tenant is entitled to free rent for the remainder of September 2017.

I find insufficient evidence to support the parties' claims for damages. I find the weight of the evidence is that they each contributed to the harassment and toxic relationship that developed. I dismiss this portion of their claims.

Conclusion:

Based on the settlement agreement, I find the landlord is entitled to an Order of Possession effective September 30, 2017 and to retain the security deposit as part payment of rent. I give the landlord leave to reapply for damages to the unit if necessary after the tenants vacate and within the legislated time limits.

As the matter is settled, I find neither party entitled to recover their filing fees.

I dismiss the claims of the parties for compensation for harassment, stress and mental health issues without leave to reapply.

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 29, 2017

Residential Tenancy Branch