



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC, CNC, ERP, FFT, LRE, MT OLC, PSF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the 1 Month Notice to End Tenancy for Cause (“ 1 Month Notice”), pursuant to section 47;
- an order compelling the landlord to conduct emergency repairs for health and safety reasons pursuant to section 33;
- an order compelling the landlord to provide services and facilities required by law or the tenancy agreement pursuant to section 65;
- an extension for filing this application after the dispute period indicated on the notice and I am requesting more time to file the application pursuant to section 66;
- an order to suspend or set conditions on the landlord's right to enter the rental unit or site pursuant to section 70;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-

examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue

The tenant requested that her application be heard as she was away tending to her gravely ill mother and was not aware of the landlords' application. Based on the exceptional circumstances, I agree to hear the tenants' application in its entirety.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The landlord gave the following testimony. The month to month tenancy began on June 15, 2017. The monthly rent is \$1200.00 due on the first of each month. The tenant provided a \$600.00 security deposit which the landlord holds.

The landlord testified that the tenancy agreement was to be for a strictly non-smoking tenant as she suffers severe allergies to smoke. The landlord testified that the tenant advised her that she was a non-smoker. The landlord testified that the tenant began smoking three weeks after she moved in. The landlord testified that she gave numerous verbal warnings; "too many to count". The landlord testified that she gave the tenant five written warnings to stop smoking, but to no avail. The landlord testified that the tenant smoked in the suite and outside all around the home. The landlord testified that she made a final attempt to discuss this matter in the hopes to resolve it with the tenant but the tenant was unwilling. The landlord testified that it was always clear that smoking was not allowed anywhere on the property.

The landlord testified that the tenant has become extremely abusive and difficult to deal with over the smoking issue. The landlord testified that the smoking has resulted in increased medication, numerous trips to the doctor and one hospital stay. The landlord issued the One Month Notice to End Tenancy for Cause on October 4, 2017 with an effective date of November 30, 2017 on the basis that:

The tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed an occupant or the landlord.

The landlord requests an order of possession.

The tenant gave the following testimony. The tenant testified that she was given verbal authorization from the landlord to smoke in and around the property. The tenant testified that the landlord was very accommodating and friendly and encouraged her to smoke freely. The tenant testified that the landlord was very manipulative and that she has made numerous calls to the police about her without justification. The tenant testified that she will move out in two months. The tenant testified that that she wishes to remain for that time to get her things in order.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility to provide sufficient evidence to support the issuance of the notice. The landlord submitted the tenancy agreement that clearly reflects that this is a non-smoking unit and property. The tenant was unapologetic for her continued smoking even after having received numerous verbal warnings and five written warnings. The tenant described herself as a “closet smoker” and conceded that she has hidden her smoking from previous landlords in the past. Based on the landlords documentation, the tenants own testimony and on a balance of probabilities, I am satisfied that the landlord has provided sufficient evidence to support the issuance of the notice. I am satisfied that the tenancy must be terminated and that the landlord is entitled to an order of possession pursuant to Section 55 of the Act.

The landlord is entitled to retain \$100.00 from the security deposit for the recovery of the filing fee for this application.

As I have found that the tenancy has come to an end, I hereby dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

The One Month Notice to End Tenancy for Cause dated October 4, 2017 with an effective date of November 30, 2017 is confirmed, it is of full effect and force. The landlord is granted an order of possession, the tenancy is terminated.

The tenants' application is dismissed in its entirety 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: January 29, 2018

Residential Tenancy Branch