



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NIKKEI SENIORS HEALTH CARE AND HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties and witnesses attended and gave sworn testimony. The landlord said they served the One Month Notice to End Tenancy dated October 26, 2017 to be effective November 30, 2017 by registered mail and the Application for Dispute Resolution on the tenant by giving it to the office of the hospital where she is now residing. I find the documents were legally served pursuant to sections 88 and 89 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;
- b) A monetary order pursuant to Sections 7, and 67 for damages;
- c) To retain the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that they are entitled to an Order of Possession and compensation for cleanup? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties and witnesses attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenancy commenced in April 2009, that monthly rent is \$485 and a security deposit of \$200 was paid. It is undisputed that the tenant continues to pay rent but has not resided in the unit since June 2017 when she was apprehended under the Mental Health Act. She has been residing in hospital and getting treatment. The social worker said treatment is going well but it cannot be determined when she might return. If it was near a release date, she would be assessed to find out what level of care she needs.

The tenant said she never meant to disturb her neighbours. She suffered a lot and had no way to solve her problems. Then she was kidnapped and taken to hospital and cannot get out now. Neither she nor her social worker had any solutions to deal with clearing out her unit.

The landlord said the tenant has been referred to the Public Trustee to manage her financial affairs but this is going to take some time. The landlord requests an Order of Possession effective March 31, 2018 as the tenant has paid rent to that date. They also request a monetary order for \$720 which is comprised of \$100 for carpet cleaning, \$120 for cleaning the suite (6 hours) and \$500 for clearing out the suite. Invoices are in evidence. They provided photographs showing many items in the suite. The landlord asked for some guidance on dealing with the tenant's belongings. I mistakenly referred to the Residential Tenancy Regulation 7. The section is actually Residential Tenancy Regulation, Part 5, sections 24, 25, 26 and 27. These sections refer to the landlord's obligations to arrange for storage of the tenant's goods if necessary and to keep an inventory.

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis:

The One Month Notice to End Tenancy was served under section 47 of the Act. The tenant has 10 days to file an Application to dispute the Notice. If the tenant does not, section 47(5) provides that the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the unit on that date. I find the tenant received the One Month Notice dated October 26, 2017 by registered mail and never filed an Application to dispute it. I find the tenancy ended on November 30, 2017 in accordance with the Notice. I find the landlord entitled to an Order of Possession effective March 31, 2018 as requested.

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.

I find section 37 (1) and (2) require a tenant to leave the unit reasonably clean and undamaged and return all keys to the landlord on the day the tenancy ends. I find due to the circumstances of the tenant's apprehension under the Mental Health Act, she has been unable to clean her unit or clear out her belongings. Although this is an extraordinary circumstance, I find the tenant has violated the Act and the landlord has incurred the costs of cleaning and clearing out the unit. I find the landlord entitled to compensation of \$720 as claimed. I find their costs are well documented.

Conclusion:

I find the landlord is entitled to an Order of Possession effective March 31, 2018 and to a monetary order as calculated below. I find them entitled to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Cleaning carpet and suite	220.00
Clearing out furnishings and belongings	500.00
Filing fee	100.00
Less security deposit	-200.00
Total Monetary Order to Landlord	620.00

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: March 06, 2018

Residential Tenancy Branch