Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL MNDC FF

Introduction:

Only the landlord attended the hearing and gave sworn testimony. The Two Month Notice to End Tenancy for landlord's use of the property is dated November 28, 2017 to be effective January 31, 2018 and the landlord said he posted it on the tenant's door on November 28, 2017. He said he served the Application for Dispute Resolution and Amendment by registered mail. He provided proof that the tenant received the Application but said the postal service showed only that they were leaving notices for the tenant on March 23, 2018 to pick up the Amendment. I find the application was legally served pursuant to section 89 and the amendment is deemed to be served pursuant to section 90 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) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55;
   b) To obtain a monetary order for losses suffered due to the tenant not vacating in accordance with the Notice.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and they are entitled to an Order of Possession? Is the landlord entitled to a monetary order for losses and to recover the filing fee?

Background and Evidence

Only the landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in March 2014, it is now a month to month tenancy and rent is $1000 a month plus $40 for utilities. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

   a)   The landlord requires the property for their own use for occupancy by the landlord or the landlord's spouse or close family member (father, mother or child) of the landlord or the landlord's spouse.

The landlord explained that he needed to take over the basement suite for his recording /music studio. He supplied a letter from his former property manager which gave him 6

months notice to vacate. He stated that because the tenant did not vacate according to the legal notice to end tenancy or file a dispute to it, he incurred losses of extra rent for the commercial space he rented plus extra utilities.

He supplied evidence that he had emailed the tenant twice to remind her to move out on January 31, 2018 but she did not respond. She paid $100 less for February rent but paid March 2018 rent in full. She sent an email on March 1, 2018 to say she was vacating on March 31, 2018. The landlord requests an Order of Possession effective on March 31, 2018 and compensation for losses as follows:

Studio rent for 2 months (Feb. & March) 2x $1732.50 = $3465.00
Utilities for studio   537.63
Short rent for February 2018   100.00
Less rent received $900 February and $1000 March

The landlord agreed the tenant had not been given a free month's rent in accordance with sections 49, 50 and 51 of the Act so the free month should be deducted from the total owing.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.
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<u>Analysis:</u>
The onus is on the landlord to prove on a balance of probabilities that they have need of the unit for their own use in order to end a tenancy under section 49 of the Act. I find the evidence of the landlord credible as it is well supported by the notice from his previous landlord showing he was losing the studio he was renting for his business. I find the landlord entitled to an Order of Possession effective March 31, 2018 as he requested.

Due to the tenant not vacating in accordance with the legal notice on January 31, 2018, I find the landlord suffered losses. 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 the tenant violated the Act by not vacating in accordance with the Notice to End Tenancy legally served pursuant to section 49 and not making an Application to dispute the notice. As a result of her violation, I find the landlord suffered losses. I find his evidence credible on the losses he suffered as it is supported by the management of his former rental suite for his profession. Therefore I find him entitled to recover cost of the studio rent for two months less the rent he collected from the tenant. Utilities are excluded in both calculations as these vary with use. Therefore the studio utilities are not added for the landlord and not deducted for the tenant. I find him also entitled to recover the $100 rent arrears in February's rent and the filing fee.

As the tenant has not received the one month free rent to which she is entitled pursuant to the section 49 Notice according to section 51 of the Act, one month's rent will be deducted from amounts found owing to the landlord.

Conclusion:

I find the landlord entitled to an Order of Possession effective March 31, 2018 and to a monetary order as calculated below. I find him entitled to recover filing fees for this application.

Studio rent $1732.50 x 2	3465.00
Short rent for February 2018	100.00
Filing fee	100.00
Less rent (only) collected from tenant: Feb.	-900.00
Less rent collected for March 2018	-1000.00
Less one month free rent pursuant to section 51	-1000.00
Total Monetary Order to Landlord	**765.00**

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: April 10, 2018

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Residential Tenancy Branch