



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they personally served on February 7, 2018 the One Month Notice to end Tenancy for cause dated February 7, 2018 to be effective March 31, 2018. They said they served the Application for Dispute Resolution dated March 16, 2018 personally. The tenants agreed they received them as stated. I find that the tenants 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; and
- b) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession 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. The undisputed evidence is that the tenancy commenced July 1, 2016, a security deposit of \$450 was paid and rent is currently \$1140 a month. The landlord testified they served the Notice to End Tenancy pursuant to section 47 of the Act for the following reasons:

1. *The tenant or a person permitted on the property by the tenant has*
 - (a) *Significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - (b) *Put the landlord's property at significant risk.*
2. *The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.*

The landlord explained there had been some floods caused by the tenants with the worst one being on February 2, 2018. The water flowed down and affected the furnace and the other residents are frightened that this could cause a fire in this old building and jeopardize their safety. They said they called a construction company to investigate. The company used a machine and found the other floors above the tenants were dry but their investigation and mapping with thermal imaging indicated the water came from the tenants' unit, most likely the bathtub. The company report is in evidence. The landlord said they believe the flooding may have been caused by leaving a tap running.

The tenants deny responsibility. They said there was a hole in the drain from above and they had had moisture issues since they moved in. They submitted a list of their complaints but had not filed an Application for Dispute Resolution. The landlord said the hole in the drain happened in March 2018, it was caused by a painter and fixed immediately. It was not related to the February 2, 2018 flood. They request an Order of Possession as soon as possible for the other residents are afraid to sleep at night in case of danger.

After some negotiation, the landlord agreed to have the Order of Possession effective April 30, 2018 and the tenant agreed they would pay their April rent now and vacate on April 30, 2018.

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 the landlord's evidence credible that these tenants caused a flood on February 2, 2018 which caused extraordinary damage to the landlord's property and significantly affected the peaceful enjoyment of the other residents. I find the landlord's credibility is well supported by the professional report in evidence. I find the construction company attended the premises after the flood and investigated with a thermal mapping machine and concluded the flood originated in the tenant's unit.

While the tenant attended the hearing, I find the Tenant did not make an Application pursuant to Section 47 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective April 30, 2018 as agreed by the parties.

Conclusion:

I find the landlord is entitled to an Order of Possession effective April 30, 2018 and to recover filing fees paid for this application.

I HEREBY ORDER that the landlord may recover the \$100 filing fee by deducting \$100 from the tenant's security deposit.

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

Residential Tenancy Branch