



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC OLC FF

Introduction

Both parties and witnesses attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated March 13, 2018 to be effective April 30, 2018 and the tenant confirmed it was served personally on March 13, 2018. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated March 23, 2018 and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) That the landlord obey the Act, namely in observing the terms of the first letter they received to comply; and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The name of the landlord on the style of cause is amended to show the professional name of the landlord who served the Notice to End Tenancy. The undisputed evidence is that the tenancy commenced September 1, 2017 on a fixed term to August 31, 2018. Rent is \$1900 a month and a security deposit of \$950 and a pet damage deposit of \$950 were paid. The parties agreed that this was a brand new home in a manufactured home park when the tenancy commenced.

The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the property by them has put the landlord's property at significant risk; and
- b) There has been a material breach of the tenancy agreement that was not corrected within a reasonable time to do so.

The landlord had three witnesses attend the conference and provided many letters in evidence. The landlord's evidence was that the tenant had a cat or cats and there has been a strong odour of cat feces and urine emanating from the unit since early in the tenancy. The maintenance person gave sworn testimony in the hearing that he has been into the unit several times concerning repairs and there has consistently been a very strong odour and he has observed cat feces and urine around the cat litter box which does not appear to be cleaned regularly. He also noticed this strong smell in the bathroom when he went to repair a lock and the tenant informed him the toilet had been plugged; nothing had been done regarding the plug and the bathtub had a feces ring around it possibly from the toilet being plugged. The landlord called a plumber who in his report said the cause was a paper towel and kitty litter in the line. The maintenance person and a contractor described the smell as provoking a gag reflex. Other contractors employed by the landlord provided letters describing a similar smell and condition of the unit persisting since the beginning of the tenancy.

Management performed inspections and supplied reports for September 28, 2017, January 12, 2018, April 18, 2018 and May 4, 2018, May 19, 2018. There was also the plumber's report on March 14, 2018. On no occasions was the tenant's unit found acceptable although the landlord noted on one occasion that some cleanup was done.

The tenant described his difficult situation with his mother being very ill. He said he has done his best to keep the unit clean and tidy but when he has had to go out of town for a few days, it goes downhill. He now has his father staying there and cleaning when he is out of town. He said there were no complaints between January and March 2018 and they were all earlier in the tenancy. He disputes the Notice for he says he had a warning letter, he cleaned up and when the landlord came for the inspection, they did not inspect but handed him the Notice to End Tenancy on March 13, 2018. He disputes the amount of the plumbing invoice and said he should have been given the option to do it himself or hire someone. He said the plumbing issue caused the smell and agrees it was his mistake to flush a paper towel. In respect to the landlord's photos, he said the kitty litter was swept into a pile and he just forgot to pick it up. He claims the litter box is cleaned daily and the photos only show a couple of pee spots and there is no feces in the bathroom but only around the litter box.

The landlord said it was necessary to hire a professional plumber as the lines are connected to other units and there is the issue of liability. They pointed out that there were letters from September 2017, the beginning of the tenancy, and even after the Notice confirming the odour problem. They said the tenant has also breached a material term of the tenancy agreement by not maintaining the unit in a clean and sanitary condition.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that

- a) The tenant or a person permitted on the property by them has put the landlord's property at significant risk; and
- b) There has been a material breach of the tenancy agreement that was not corrected within a reasonable time to do so.

I find the credibility of the landlord well supported by the witness statements in letters and by the witnesses in attendance at the hearing. Although the tenant claims he had no complaints in writing from January to March 2018, I find the maintenance person and the property administrator testified that they found there was excessive odour of cat feces and urine and often kitty litter scattered on their visits. I find this was noted on each report of staff and of contractors who attended the unit. While it is unfortunate that the mother is awaiting accommodation, I find the weight of the evidence is that the landlord has sufficient cause to end this tenancy as I find the tenants' behaviour has put the landlord's property at significant risk and there has been a material breach of the tenancy agreement (Rule 9). Contrary to what the tenant alleged, I find the weight of the evidence is that they did not comply with the requests of the landlord to clean and maintain the unit in a clean and sanitary condition. Therefore I dismiss the application of the tenant.

Pursuant to section 55 of the Act, I find the landlord is entitled to an Order of Possession in these circumstances. The landlord agreed to an effective date for an Order of Possession of June 30, 2018 and the tenant reluctantly agreed.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed without recovery of the filing fee. The tenancy is at an end on April 30, 2018. An Order of Possession is issued to the landlord effective June 30, 2018. .

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: June 07, 2018

Residential Tenancy Branch