



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

Both parties and a witness attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated May 31, 2018 to be effective July 1, 2018 and the tenant confirmed it was served by posting it on the door on May 31, 2018. A notice which is served by posting on the door is deemed to be received 3 days later. Therefore the effective date on the Notice is automatically corrected to July 31, 2018 pursuant to section 53 of the Residential Tenancy Act as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated June 7, 2018 and the landlord agreed they received it.

The landlord/respondent gave evidence that he served his evidence on July 17, 2018 with a witness but he said that the cleaning estimate was received and served too late. The tenant objected and said the landlord's evidence was served too late as she understood that it had to be served 11 days prior to the hearing. I find Rule 4.1 of the Residential Tenancy Branch Rules of Procedure state the respondent must serve the evidence at least 5 days prior to the hearing and the landlord served his evidence 11 days prior. However, the later cleaning estimate will not be considered as it was served too late. 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;

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 and a witness for the tenant attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2016, rent is \$800 a month and a security deposit of \$400 was paid. The landlord served the Notice to End Tenancy for the following reasons:

- a) The tenant refuses to pay the pet damage deposit;
- b) The tenant or a person permitted on the property by them has put the landlord's property at significant risk;
- c) The tenant has not repaired the damage within a reasonable time after notice to do so.

The landlord explained that the tenant had a dog when the tenancy commenced. She claimed it was a support dog so he did not charge the pet damage deposit. Her dog died and she got a new puppy about 6 months ago and she also has a cat; both animals are damaging the premises and she has refused to pay a pet damage deposit. The tenant said she was training the puppy to be a supportive animal as she has an anxiety disorder but it is not certified yet.

The landlord provided many photographs in evidence illustrating the damage to the rental property. He said there is urine and feces soaked into the floor and rugs and feces has been painted over on one wall; this will have to be removed. Furthermore, he described the smell as overpowering. He has been unable to rent the downstairs unit for prospects are turned off by the smell. He estimates flooring and carpets and some drywall will have to be removed to get rid of the smell. He had called Family Services because he was so concerned about the unhealthy living conditions which might be putting the children at risk. The tenant said the children left for a short time while a cleanup was done. When Family Services re inspected, they found the unit had been suitable again. She provided no evidence of this inspection.

The landlord provided photographs of damage to the unit. Many areas had scratches and dents; the tenant provided photographs of attempted repairs showing white filler over areas. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached..

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. Section 47 of the Act cites causes, any one of which if proved, is sufficient cause to end the tenancy.

I find the evidence of the landlord credible that the tenant refuses to pay a pet damage deposit although she has a puppy and a cat; the tenant did not deny this. I find further that the weight of the evidence is that the tenant or a person permitted on the property by them has put the landlord's property at significant risk. I find the feces and urine of the animals soaking into carpets and floors are significantly damaging the landlord's property and putting it at risk; I find it credible that carpets and parts of walls may have to be replaced due to the pervasive odour and health hazards. The tenant said her 3 year old autistic son takes off diapers at night and may smear the walls due to his condition. While this is very unfortunate and a significant burden for her, it illustrates the continuing risk of health hazards. I also find that although the tenant has attempted some repairs, the weight of the evidence is that she has not done all the repairs required to maintain the property. I find the weight of the evidence is that the landlord has good cause pursuant to all 3 reasons cited by him pursuant to section 47.

I dismiss the Application to set aside the Notice to End Tenancy. I find the tenancy ended in accordance with the Notice on July 31, 2018. In these circumstances, section 55 of the Act provides the landlord is entitled to an Order of Possession. I find the landlord entitled to an Order of Possession effective August 31, 2018 as agreed by him.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on July 31, 2018. An Order of Possession is issued to the landlord effective August 31, 2018. The filing fee was waived. .

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: July 26, 2018

Residential Tenancy Branch