



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROADSTREET PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated June 27, 2018 to be effective July 31, 2018. and the tenant confirmed it was served by posting it on the door on June 27, 2018. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated July 9, 2018 by registered mail and the landlord agreed they received it. I find the documents were legally served pursuant to section 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; and
- b) To recover filing fees 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 undisputed evidence is that the tenancy commenced February 1, 2018 on a fixed term to January 30, 2019, rent is \$1388 a month plus \$60 for parking and a security deposit of \$694 was paid.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure require the landlord to provide their evidence first as the landlord has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

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

47(h): the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The landlord said the tenant had installed a window air conditioner in May 2018 which overhangs the window sill. This is a breach of their Policy Rules and Guidelines which state nothing can be installed that changes the appearance of the building and nothing can overhang a window sill. The tenant agreed to abide by these rules in his lease. The manager said they telephoned the tenant at first but he refused to remove the air conditioner so they sent him written notice which gave him a week to remove it. He did not so the Notice to End Tenancy was issued. The manager noted that the installation had also resulted in damage to the blinds and in the window being left open which are other contraventions of the rules since blind damage alters the appearance of the building and leaving a window open may result in rain or snow ingress. The landlord provided a letter from a tenant noting she was worried about the safety of an air conditioner overhanging as her car was parked underneath. The manager also noted that the bike racks were underneath and this could pose a safety risk.

The tenant said this building is in a hot part of the province and he cannot sleep when his bedroom is reaching 27 degrees or more at night. He said his air conditioner is not noticeable and it is safely screwed in place and there are no cars parked so close that it might fall on them if it fell. He denies it alters the appearance of the building and said friends have confirmed they do not see it until it is pointed out.

The landlord said it is very noticeable, the manager sees it from her office and other tenants have complained. The area manager noted that all the units in the building, including the tenant's, have built in air conditioners coming off the balcony wall into the living room which cool down the units. He said it might be subjective but he stayed there recently when it was over 32 degrees outside and found the built in air conditioner cooled the apartment sufficiently. He also pointed out that the tenant was contravening the rule about leaving the window open to accommodate his installation and this poses the problem of damage from rain and snow. The tenant has breached these material terms of his lease and is unwilling to correct them so they request an Order of Possession. They requested a subsequent hearing scheduled for September 14, 2018 regarding a Notice to End Tenancy for unpaid rent be heard at this time. The tenant objected as he has not submitted his evidence for this so I declined to join the hearings.

The tenant said he would prefer an effective date after his next hearing in September. The landlord said he is in two months arrears of rent and requests the Order be effective August 31, 2018.

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 the tenant has breached a material term of the tenancy agreement and not corrected it within a reasonable time after written notice to do so. I find the landlord's evidence well supported by the photographs in evidence which show the tenant's installed air conditioner overhanging his window sill and very noticeable and the blinds damaged. I find this illustrates that it does alter the appearance of the building in contravention of the rules. While the tenant may find the unit too hot for him, I find the building has accommodated the tenants by installing built in air conditioners which come off the balcony and are allegedly sufficiently powerful to cool the unit.

I dismiss the application of the tenant and find the landlord has sufficient cause to end the tenancy. The tenancy is at an end on July 31, 2018 according to the Notice. In these circumstances, section 55 of the Act provides the landlord is entitled to an Order of Possession which is issued effective August 31, 2018 as requested.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed without recovery of the filing fee due to lack of success. An Order of Possession is issued to the landlord effective August 31, 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: August 17, 2018

Residential Tenancy Branch