



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated July 31, 2018 to be effective September 1, 2018 and the tenant confirmed it was served personally. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated August 15, 2018 and the landlord said it was out of time and they did not receive the evidence until September 13, 2018. The tenant contended he filed his Application on August 10, 2018 so was not out of time. 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 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 January 2011, it is now a month to month tenancy, rent as subsidized is \$467 a month and a security deposit of \$215 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:

- a) The tenant or a person permitted on the property by them has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- b) engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord provided many letters in evidence and some videos in evidence. Most of the letters related how various members of staff had been verbally abused by the tenant, for example when a staff asked him to not play his saxophone in the cafeteria but to move it one room over, when staff went to fix a faucet and when a friend came with roller blades. The tenant's verbal abuse has unreasonably disturbed the staff.

He also has a friend visit him and use roller blades in the common areas. There are many elderly residents with walking aids and this greatly disturbs them and jeopardizes their safety. The tenant said his friend only skated a few feet in the hallway and then took them off so the staff and Police over reacted.

The landlord also included a complaint from another tenant about this tenant smoking marijuana on a common patio which greatly disturbed them. The landlord verified this account by viewing the video from that floor.

After reviewing the evidence, the tenant said he was planning to move on anyway for the people don't like him in this complex. The parties discussed a possible move-out date and settled on December 31, 2018 as offered by the landlord.

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.

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 she or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the numerous staff reports support the verbal abuse allegation and the oral testimony and videos support that the tenant has a guest who roller blades in the common area which unreasonably disturbs other residents and makes them fear for their safety. I also find the allegation of marijuana smoking in the common area is well supported by the tenant complaint and supporting video. In respect to the filing of the

Application, the Residential Tenancy Branch document states it was filed on August 15, 2018 which is too late to dispute the section 47 Notice.

For all of the above reasons, I dismiss the Application of the Tenant. Section 55 of the Act states the landlord is entitled to an Order of Possession in these circumstances. I find the landlord entitled to an Order of Possession effective December 31, 2018 as agreed by them.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 1, 2018. An Order of Possession is issued to the landlord effective December 31, 2018 as agreed. 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: October 2, 2018

Residential Tenancy Branch