



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC LRE MNDCT FF

Introduction

Both parties and several witnesses attended the hearing and gave sworn testimony. The One Month Notice to End Tenancy is dated October 3, 2018 to be effective November 3, 2018 and the tenant confirmed it was served personally on October 3, 2018. The effective date on the Notice is automatically corrected to November 30, 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 served the Application for Dispute Resolution dated October 10, 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;
- b) To order the landlord to obey section 29 of the Act and not enter their unit without sufficient notice;
- c) To obtain compensation for the landlord's actions towards them; and
- d) 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?

Has the tenant proved on the balance of probabilities that the landlord is entering the unit illegally and mistreating them? Are they entitled to compensation and if so, in what amount?

Background and Evidence

Both parties and witnesses 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 August 27, 2018 on month to month tenancy, rent is \$1275 a month and a security deposit of \$637.50 (\$320 from each of two tenants) was paid.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure requires 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 reason:

There has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided two independent witnesses in person to give evidence besides them. The landlords explained the tenancy commenced with two males, there were disagreements and the first one left voluntarily because he said this tenant smoked marijuana. The landlord refunded the balance of his rent for that month and his security deposit of \$320. The female witness was a prospective tenant who had answered this tenant's advertisement for a co-tenant after the first one left. She was interviewed by the landlord and approved. As she has asthma she was concerned about any smoking in the unit. The landlord showed her a copy of the lease with addendum that the tenant had signed that prohibited smoking inside the unit. She agreed to rent the unit but when she went there, she smelled a strong smell of marijuana smoke. Her mother came with her and also said the unit reeked of this smoke. The tenant was the only person residing in the unit at this time. The basement tenant said he had smelled marijuana smoke and asked this upper tenant about it. The tenant said it was raining and he had smoked inside but would not do it again. After that, he smelled it again when inside his own basement unit. In answer to the tenant's contention that it may have drifted in the window as neighbours smoke it, the basement tenant said they do not open their windows and maybe it came through the air conditioning or something.

The female landlord said when she served the Notice to End Tenancy, the tenant admitted he smoked it in the home but said he would not do it again. She said the unit reeked of smoke and she reminded the tenant of the contract. A warning letter dated

September 9, 2018 is in evidence. She said the new tenant moved some of her stuff into the unit but then this tenant locked her out when she came back after the landlord had served the Notice to End Tenancy for cause.

The tenant said he does not smoke in the house. He called the Police because the first co-tenant had threatened him with a knife. This co-tenant had left something on the stove and went to bed and then fought with this tenant who called the Police. He said he was trying to protect the property but the landlords were angry with him. He said the neighbours smoke marijuana and any smoke smell might come from outside. He said the male landlord tried to come into the home without notice or permission. The landlord denied this but said there is a two lock system and he was trying to find a key that worked to give to the new female co-tenant. He said the tenant threatened to sue him but he was only checking the keys as the female tenant had asked for this.

The parties confirmed the tenant already vacated the premises before the end of October. The landlord said they returned his security deposit to his forwarding address; the tenant said he had not checked that mail box. He left the conference abruptly seemingly upset at the evidence presented. His advocate remained in the conference and took the details of where the security deposit was sent.

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 considered all the evidence although not all of it is referenced in my Decision.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the cause cited, namely, that he was smoking marijuana in the unit. I find this was a material breach of the tenancy agreement which expressly prohibited it in the addendum attached to it. I find the credibility of the landlord well supported by the evidence of the independent witnesses who attended the unit and smelt an overwhelming odour of marijuana smoke. I do not accept the tenant's evidence that this emanated from outside and the female landlord and other witnesses said the odour was from inside the unit and was distinct when the tenant opened the door. I dismiss the application of the tenant to cancel the Notice to End Tenancy. Pursuant to section 55 of the Act, I find the landlord entitled to an Order of Possession effective November 30, 2018.

I find insufficient evidence to support the tenant's claim that the landlord entered his unit illegally. I find the landlord's evidence credible that he was merely trying keys to get one that worked for the new tenant. His credibility is supported by the new tenant's confirmation of this. I dismiss this portion of the tenant's claim. In respect to the tenant's claim for damages, I note he said that he made this out in anger and the claim should be halved to about \$5000. I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I carefully considered each of the tenant's hand written claims. I find insufficient evidence that the landlord through violation of the Act or Tenancy Agreement caused any of the damages or losses listed by the tenant, such as moving expenses, three months rent and storage of goods. I find he is entitled to the return of his security deposit but the sworn testimony of the landlord is that it was returned already to the new address he provided. I dismiss the claim of the tenant for damages.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy and for damages is dismissed without leave to reapply. I find him not entitled to recover the filing fee due to lack of success. The tenancy is at an end on November 30, 2018 (as corrected). An Order of Possession is issued to the landlord effective November 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: November 20, 2018

Residential Tenancy Branch