



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC OLC FF

Introduction

Both parties attended the hearing and gave sworn testimony. The landlord was represented by the resident property manager and is hereinafter called 'the landlord'. The One Month Notice to End Tenancy is dated March 23, 2019 to be effective April 30, 2019 and the tenant confirmed it was served by posting it on the door. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated March 29, 2019 and the landlord agreed they received it. I find the documents were legally served according 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) To order the landlord to provide services and facilities required by law or the tenancy agreement; and
- c) To recover the filing fee.

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 the present unit on July 1, 1998 and the tenant lived in the building since 1997. It is now a month to month tenancy, rent is \$885 a month and a security deposit of \$312.50 was paid in 1997.

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:

1. The tenant or a person permitted on the property by him:
 - (a) has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - b) has put the landlord's property at significant risk.
2. The tenant or a person permitted on the property by him has caused extraordinary damage to the unit or property.

The landlord described how the tenant had left a tap running when he was out. It set off the fire alarm and the fire department determined the problem was on the second floor. However, the flooding was not detected until the manager and a plumber saw water coming into the parking area and traced it back to the tenant's unit. The overflowing sink flooded the tenant's unit and caused flooding in the unit below him. The unit below him has to have the ceiling replaced and much restoration work in the unit. The occupant will have to vacate her unit for at least 5 days while some of the work is completed; there is asbestos in the ceiling as this is an old building which poses a health risk and adds to the remediation cost of the landlord. Some of the remediation work is costing about \$13,700 and the landlord also is paying \$200 to the tenant of the lower unit to cover some of her costs of alternate accommodation. The landlord also said the tenant has a lot of garbage in his unit so it was difficult to even see the sink. She has warned him about this before.

The tenant said the flood was a mistake, an accident and he feels sorry that it has caused problems for the tenant of the lower unit and the landlord. He said the fire alarm system should have allowed the fire department to locate the source of the leak. In his documentary evidence, he said the concrete floors have cracks and if they were not like this, the water would not have leaked

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. Section 47 of the Act sets out causes for ending a tenancy, any one of which, if proven is sufficient cause to end a tenancy.

I find the weight of the evidence is that the tenant by leaving his tap running and causing a flood into the unit below

- (a) has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- b) has put the landlord's property at significant risk; and
- c) has caused extraordinary damage to the unit or property.

I find the tenant is remorseful about what happened, describing it as an accident or mistake. However, I find the reasons for ending the tenancy in section 47 as quoted above do not require intent to cause damage to be proven. I find the tenant's behaviour caused the damage, the damage is extraordinary and it has jeopardized the health, safety and lawful rights of the tenant in the suite below him. I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find insufficient evidence that the landlord is not supplying facilities or services required by law. I dismiss this portion of the application.

The parties discussed a date for the tenant to vacate and agreed June 30, 2019 would be appropriate for an Order of Possession so the tenant has time to find new accommodation. In response to the landlord, I advised her that they must bring an application to claim the security deposit of the tenant unless he consents in writing that the landlord may retain it. See section 38 of the Act.

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. The tenancy is at an end on April 30, 2019. An Order of Possession is issued to the landlord effective June 30, 2019 as agreed.

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: May 14, 2019

Residential Tenancy Branch