



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYPIEA REAL ESTATE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF MNDC

Introduction

Both parties attended the hearing and gave sworn testimony. The landlord had an authorized representative and he is hereinafter called 'the landlord'. The One Month Notice to End Tenancy is dated March 23, 2019 to be effective April 28, 2019 and the tenant confirmed it was served by leaving it under the door. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated March 29, 2019 by registered mail and the landlord agreed they received it. The tenant filed an Amendment claiming \$1200 in damages on April 26, 2019 but he said the Residential Tenancy Branch office told him it was likely out of time so he did not serve it on the landlord. The landlord said he never got it. I find the Notice and Application were legally served pursuant to sections 88 and 89 for the purposes of this hearing but the Amendment was not served. Therefore, I decline to hear the amendment as, according to the Rules of Natural Justice, the other party must have notice of any case against them and have the opportunity to respond. 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 recover the filing fee 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. This was a difficult hearing as one of the parties' telephone lines was extremely noisy and both parties spoke English as a second language. The undisputed evidence is that the tenancy commenced in March or April

2018 (they disagreed on the month), it is now a month to month tenancy, rent is \$650 a month and a security deposit of \$325 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 has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord stated on his attachment to the Notice to End Tenancy that three tenants in the house have complained/reported the smell of marijuana in the house on numerous occasions. As per the tenancy agreement, smoking is only allowed outside. He identified this as the material breach of the tenancy agreement. There was no copy of the tenancy agreement provided in evidence. The landlord said he had spoken to the tenant on numerous occasions and requested him to stop smoking marijuana inside the house but he had given him no written notice to do so. After I pointed out that the Act section 47 (h) provides a written notice is necessary, he said he thought he had given him a letter. The tenant denied having received any written notice.

The landlord also stated on his attachment that the other tenant had to be removed by the Police and is no longer a tenant and the tenant is not doing his housekeeping duties. However, the landlord had not checked other reasons for ending the tenancy on the Notice.

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 weight of the evidence of the landlord is that he never served the tenant in writing with notice of a breach of a material term of the tenancy agreement and gave him a reasonable time to correct his behaviour. He did not supply a copy of the tenancy agreement in evidence so it cannot be determined whether or not there was a material breach of the tenancy agreement or if so, what it was. I find insufficient evidence to

support his reason for ending the tenancy. I advised both parties, if they wished to pursue further applications, to obtain some witnesses and help with the process.

I dismiss the tenant's claim for damages as it was in a filed Amendment which I find on the weight of the evidence was never served on the landlord.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The tenancy is continued until legally ended in accordance with the Act. I find the tenant entitled to recover his filing fee as he was successful in cancelling the Notice.

I HEREBY ORDER that the tenant may deduct \$100 from his rent to recover his filing fee.

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