



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC

Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice). The hearing commenced at 11:00 a.m. as scheduled. The landlord was in attendance at the commencement of the hearing; however, the tenant did not appear until approximately 11:06 a.m. using her boyfriend's cell phone. The tenant believed that the hearing was to be held face-to-face in Burnaby. The tenant was informed that the hearing was being held via teleconference as indicated on the Notice of Dispute Resolution Hearing. The hearing proceeded and both parties were given the opportunity to be heard.

Issue(s) to be Decided

1. Whether the landlord has established grounds for ending the tenancy for cause.
2. Agreement to end the tenancy.
3. Effective date of end of tenancy.

Background and Evidence

From undisputed testimony I heard during the hearing I make the following findings concerning the tenancy. The rental unit is a single room occupancy room in a rooming house. There is a common washroom in the building and only a sink in the rental units. On December 1, 2008 the Notice to End Tenancy was posted on the tenant's door. The Notice indicates that the tenancy will end December 31, 2008 and that the reasons for ending the tenancy are that:

“The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.”

The landlord testified that he is the owner of the residential property and does not reside on the on property. The property is managed by staff 24 hours a day. From November 12 through December 5, 2008 there have been 17 separate incidents logged against the tenant for threatening behaviour against the staff and other occupants, loud disturbances and fighting between the tenant and her boyfriend at all hours of the night, and the tenant plugging the common toilet. The landlord explained that the health of the other tenants' has been put in serious jeopardy due to lack of sleep and the safety of his staff is in serious jeopardy due to the tenant's threatening behaviour. The landlord requested at Order of Possession.

The tenant denied the landlord's allegations and explained that there were issues between the tenant and the landlord's girlfriend. The tenant also claimed that the bathroom was filthy and that the Notice was served upon her in retaliation for the tenant's complaints.

During the hearing, I also heard from the tenant's boyfriend. The boyfriend was obviously very agitated and had to be cautioned about his use of foul language and interrupting the proceedings. The boyfriend claimed that the tenant is not a violent person and is of small stature, inferring that she is not a threat.

During the hearing, the tenant agreed to end the tenancy and vacate the rental unit by January 31, 2009.

Analysis

Section 47 of the Act contains the provisions that deal with ending a tenancy for cause. Section 47 requires that the effective date on the Notice given for cause be no earlier than one full month after the notice is received. In this case, the Notice was posted on the tenant's door on December 1, 2008. Posting a Notice on the door is an acceptable method of service; however, where a Notice is posted it is deemed by the Act to be received three days later. Therefore, the Notice is deemed to be received by the tenant on December 4, 2008 and the effective date cannot be earlier than January 31, 2009.

An incorrect effective date does not invalidate the Notice; rather, the effective date is automatically changed to comply with the requirements of the Act. Therefore, the Notice is changed to read an effective date of January 31, 2009.

As I found the Notice that was served upon the tenant to be valid and the tenant stated that she will voluntarily end the tenancy and vacate the rental unit by January 31, 2009, I order that this tenancy shall end on January 31, 2009. I grant the landlord an Order of Possession with an effective date of 1:00 p.m. on January 31, 2009. To enforce the Order of Possession the landlord must serve the Order of Possession upon the tenant.

Conclusion

The tenancy shall end on January 31, 2009. The landlord is provided with an Order of Possession effective 1:00 p.m. on January 31, 2009.

January 7, 2009

Date of Decision

Dispute Resolution Officer