



Dispute Resolution Services

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

Decision

Dispute Codes: CNC, CNR, FF

Introduction and Background

This hearing dealt with the tenants' application to cancel a *1 Month Notice to End Tenancy for Cause* and a *10 Day Notice to End Tenancy for Unpaid Rent* and recovery the cost of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to the other parties' submissions.

Issues:

1. Are there grounds to set aside the *10 Day Notice to End Tenancy for Unpaid Rent*?
2. Are there grounds to set aside the *1 Month Notice to End Tenancy for Cause*?
3. Mutual agreement between the parties to resolve the dispute.
4. Landlord's entitlement to an Order of Possession.
5. Award of the filing fee.

Background

Upon hearing undisputed testimony of both parties I make the following findings. The month-to-month tenancy commenced approximately one year ago. The tenants are required to pay rent of \$1,600.00 on the 1st day of every month. On February 27, 2009 the landlord personally served the tenant with a *1 Month Notice to End Tenancy for Cause* (the 1 Month Notice). The 1 Month Notice has an effective date of April 1, 2009 and indicates the reasons for ending the tenancy are that the tenants have put the landlord's property at significant risk and caused extraordinary damage to the unit/site

or property. On March 2, 2009 the landlord personally served the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent* (the 10 Day Notice). The parties agreed that the tenant was prepared to pay the outstanding rent on March 7, 2009; however, the landlord told the tenant to wait until the next day to pay it. The tenant paid the full amount of the outstanding rent on March 8, 2009.

The landlord testified that the primary reasons for issuing the 1 Month Notice were for the massive accumulation of garbage on the property, piling combustible materials next to the furnace, not maintaining the landscaping as required, and not informing the landlord of a flood in the basement or the leaking washing machine.

The tenant acknowledged that garbage had accumulated on the property; however, the tenant has since hauled the majority of it to the dump. The tenant explained that the piles of household goods in the basement were the result of moving them out of the way of the water flooding the basement. The tenant testified that the flood was caused by rapid snowmelt and that tenant took care of the water damage in the basement as he is a carpet/flooring installer and was able to dehumidify and dry out the floors. The tenant acknowledged that they had performed minimal maintenance work to the landscaping.

During the hearing, the parties were informed of the requirements of the Act with respect to effective dates for Notices to End Tenancy. As I heard the rental period starts on the 1st day of every month, the effective date on the 1 Month Notice must be the last day of a rental period. The tenants confirmed that they were prepared to vacate the rental unit by April 30, 2009. The landlord requested an Order of Possession for April 30, 2009.

The parties brought up other issues with respect to the landlord's access to the rental unit in order to show the property, which is currently listed for sale. The tenants requested that if the landlord wishes to show the property, they be provided written

notice posted to the door. The tenants were willing to accept that a Notice to Enter posted on the door will be deemed to be received the same day it is posted.

Upon hearing other testimony of the parties, the tenants were reminded of their continued obligation to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and property. The landlord was reminded of the tenants' right to quiet enjoyment of the rental property until such time the tenancy ends.

Findings and Analysis

Since I heard that the landlord requested the tenant not pay the rent on March 7, 2008 I find that the tenant was deferred from paying the rent within five days of receiving the 10 Day Notice by the landlord. Since the tenant paid the rent the next day, as instructed by the landlord, I find sufficient grounds to cancel the 10 Day Notice.

With respect to the 1 Month Notice, I find that the landlord used an effective date that does not comply with the Act. An effective date for a 1 Month Notice must be the last day in the rental period and cannot be a day part way through a rental period. Since the landlord used April 1, 2009 as the effective date, which is not the last day in the month, the effective date on the 1 Month Notice is automatically changed to read April 30, 2009. As the tenants expressed that they are prepared and willing to move out by April 30, 2009, I find that the tenancy shall end April 30, 2009. The tenants are hereby ordered to vacate the rental unit by April 30, 2009.

As the landlord has requested an Order of Possession during this proceeding, and I have found the tenancy shall end on April 30, 2009, the landlord is provided with an Order of Possession effective April 30, 2009. To enforce the Order of Possession, the landlord must serve the tenants with the Order and may file it in The Supreme Court of British Columbia.

With respect to the landlord's right to enter the property for repairs or to show prospective purchasers the rental unit, the Act provides that a tenant may give verbal consent to the landlord or the landlord may serve the tenant with a written 24 hour notice. A written notice may be served upon a tenant personally or posted on a door. Where a written notice is posted, the Act deems it to be served three days later. From the testimony I heard during the hearing, I understand that the landlord is selling the property and wishes to gain access to show prospective purchasers as quick as possible; however, due to the animosity between the parties, the tenants wish to interact with the landlord as little as possible. During the hearing, the parties reached an agreement that the landlord will give the tenants written 24 hour notice to access the property and must post it on their door and in recognition of the limited options given to the landlord by the tenants, the tenants agreed that a written Notice to Enter posted on the door would be accepted as if it were given personally to the tenants, thus avoiding the delay of three days. I accept the arrangement reached between the parties with respect to posting Notices to Enter on the door and make it binding upon the parties.

I make no award to the tenants for recovery of the filing fee.

Conclusion

The 10 Day Notice to End Tenancy was cancelled; however, the tenancy will end April 30, 2009. The landlord has been provided with an Order of Possession effective April 30, 2009.

March 25, 2009

Date of Decision

Dispute Resolution Officer