



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPC, FF

Introduction

This hearing was convened in response to an application by the landlord for an Order of Possession based on an undisputed One (1) Month Notice to End Tenancy for Cause (Notice to End) served on the tenant September 30, 2009 with an effective date of November 30, 2009. The reasons stipulated in the Notice to End are:

47(1)(d)(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

47(1)(d)(iii) put the landlord's property at significant risk

47(1)(h)(i),(ii) the tenant has failed to comply with a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord further applied to recover the filing fee for this application in the amount of \$50.

Both the landlord and the tenant attended the in-person hearing at RTB Burnaby and participated in the proceeding with their testimony and submissions. The tenant utilized the services of an interpreter.

Issues(s) to be Decided

Did the landlord have sufficient cause to serve the tenant with a One month Notice to End the tenancy?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

This tenancy began 10 years ago and is a subsidized rental unit - the rent tied to income.

The tenant primarily speaks and understands Russian, and the landlord has always been able to communicate with the tenant in key circumstances through the use of interpreters and transcribed Notices and letters to the tenant. The primary issue between the parties is described by the landlord to be one of a lack of co-operation by the tenant for over two(2) years, which is interfering with the duties and obligations of the landlord in achieving required and necessary maintenance, repairs and upgrades to the residential property. Many repairs and upgrades have had to be postponed or cancelled due to the tenant's unwillingness to comply with notices to allow the landlord enter to inspect the unit in preparation and planning for necessary repairs and remediation of the property affecting all the rental units on the property. These include major upgrades in window replacement, lighting upgrades, and renovations to improve air quality in the complex, as well as rectify severe water problems in the basements. To this end the tenant is jeopardizing the excavation of the perimeter of the building as she refuses to allow the landlord to remove the many plants which the tenant has planted. The landlord has repeatedly explained they can move and return most of the plants once the remediation project is completed, but the tenant does not agree. The tenant has also repeatedly denied access to the landlord to do routine inspections to assess the access within the rental unit to do the repairs and has found the tenant has too many belongings to properly accommodate the work – which the landlord has repeatedly offered to help, physically and financially, to move, store, or reduce the many belongings. In general the tenant's lack of co-operation is affecting the scope of a very costly remediation plan in the millions of dollars.

The tenant handed me, to read, a Doctor's letter explaining that the tenant has a mental illness and would benefit from a number of accommodations. The tenant also testified about a list of issues with the landlord's management regarding the residential property and repeatedly stated her willingness to co-operate provided the landlord met a list of conditions. The landlord explained their willingness to meet some of the tenant's

conditions and why they could not meet the rest. The tenant repeatedly tied any co-operation with the landlord to her list of these conditions.

The landlord's request is for an Order of Possession they are still trying to possibly avoid using. The landlord has a team of individuals ready and willing to help the tenant with some of her demands, and the management of the large volume of her belongings, as well as the issue of the tenant's plants. At the same time the landlord testified they must exercise due diligence toward all of the residents needs as well as preserve the landlord's property.

Analysis

On the preponderance of the evidence before me and on the balance of probabilities, I find the landlord had sufficient cause to serve the tenant with the Notice to End. It is further noted that in the absence of a resolve between the parties the landlord is entitled to an Order of Possession based on the tenant's failure to dispute the Notice to End within the prescribed time.

In part, **Section 47** of the Residential Tenancy Act states (**emphasis for ease**)

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) **must** vacate the rental unit by that date.

Conclusion

I grant an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant**, and the tenancy will end. Ending a tenancy is a serious matter. The landlord has some discretion as to when it is served, but also whether to rely on

this Order, and can, of course, choose to resolve this matter versus ending the tenancy. However, if the landlord determines to end the tenancy this Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord has been successful in their application, the landlord is granted recovery of their filing fee in the amount of **\$50**. I Order the landlord may deduct this amount from the tenant's security deposit.

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*.
