



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPC, MT, FF

Introduction

This hearing dealt with cross applications. The tenant had applied to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* and more time to make that application. The landlord applied for an Order of Possession for cause and to recover the filing fee paid for this application. Both parties appeared at the hearing and were provided an opportunity to be heard and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession for cause?
2. Should the 10 Day Notice to End Tenancy be upheld or cancelled.

Background and Evidence

I heard undisputed testimony as follows. The tenancy commenced February 1, 2008. The tenancy agreement requires the tenant pay rent of \$680.00 per month and a Notice of Rent Increase issued to the tenant requires the tenant to pay rent of \$705.00 per month effective February 1, 2010. The amount of rent paid by the tenant is subject to approval of a rent subsidy. On January 27, 2010 the landlord posted a *1 Month Notice to End Tenancy for Cause* (the 1 Month Notice) on the tenant's door. On February 2, 2010 the landlord served the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent* (the 10 Day Notice). The tenant disputed the 10 Day Notice by making an application for dispute resolution but the tenant did not dispute the 1 Month Notice.

Upon enquiry, the tenant explained that she only disputed the 10 Day Notice because it had an effective vacancy date earlier than the 1 Month Notice and the tenant was not familiar with the dispute resolution process. The landlord was of the position that the tenant had communicated to him that the tenant would not be disputing the 1 Month Notice.

The 1 Month Notice has an effective date of February 28, 2010 and indicates the reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord described how he has observed and received complaints from other residents about excessive noise, fighting, marijuana smoking and traffic coming and going from the rental unit. In addition, the front door to the rental unit has been broken twice, there are burn marks in the flooring and on January 27, 2010 the landlord and manager observed marijuana smoke coming from the rental unit and were threatened with violence by guests of the tenant. The landlord stated that the rental unit is located

in crime-free housing and a crime-free housing agreement is an addendum to the tenancy agreement. The landlord provided as evidence a copy of the crime-free housing agreement, which was signed by the tenant. The crime-free housing agreement provides that the tenant or guests of the tenant are not permitted to engage in any drug-related activity, assault or threatened assault, and any criminal activity that threatens the health, safety or welfare of the Landlord, among other things. The landlord also provided photographs of the rental unit that he submitted were taken during a scheduled inspection that took place after posting a Notice of Entry on the tenant's door.

The tenant denied that she smokes or sells marijuana, denied the door was broken a second time, claimed that the alleged burn holes in the floor are actually food stains and claimed the landlord is harassing her. It was the tenant's position that the landlord did not identify himself as the landlord and was making accusations towards her guests. The landlord refuted the tenant's testimony by stating that he did identify himself as the landlord to the tenant's guests.

The landlord requested an Order of Possession effective at 1:00 p.m. on February 28, 2010.

Analysis

Where a landlord has cause to end a tenancy, the landlord may serve the tenant with a Notice under section 47 of the Act. Section 47(4) of the Act provides that upon receipt of a 1 Month Notice to End Tenancy for Cause, a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 47(5) provides that if a tenant who has received a 1 Month Notice does not make an application for dispute resolution the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case I am satisfied the tenant was served with both pages of a 1 Month Notice and did not dispute it by making an application for dispute resolution. The second page clearly states that a tenant has 10 days to dispute the notice; otherwise, the tenant is presumed to have accepted the notice and must move out by the effective date on the Notice. Therefore, I find the tenancy will end on the effective date of the Notice provided the Notice is valid. I have considered whether the 1 Month Notice was otherwise valid by hearing from the parties with respect to the reasons for its issuance. Although the tenant denied or attempted to explain the version of events submitted by the landlord during the hearing, I find the landlord's reasons are consistent with the reasons for ending a tenancy as provided under section 47 of the Act. Therefore, I find the 1 Month Notice valid and enforceable.

In light of the above findings, I grant the landlord's request for an Order of Possession effective at 1:00 p.m. on February 28, 2010. The landlord must serve upon the tenant the Order of Possession provided to the landlord with this decision and may the landlord may enforce the Order of Possession through The Supreme Court of British Columbia.

Having provided the landlord with an Order of Possession based on the 1 Month Notice I have made no findings with respect to the 10 Day Notice as the tenancy is ending for cause.

I award the filing fee to the landlord and I authorize the landlord to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The tenancy shall end and the landlord is provided an Order of Possession effective at 1:00 p.m. on February 28, 2010. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in order to recover the filing fee paid for the landlord's application.

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: February 17, 2010.

Dispute Resolution Officer