

DECISION

Dispute Codes OPB, OPC, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and to recover the filing fee for this proceeding.

At the beginning of the hearing 2 of the Landlords' daughters dialled into the conference call and claimed that they were attending as agents for the Landlords. The Landlords were initially divided about whether they wanted the assistance of their daughters at the hearing and as a result, they were given an opportunity to discuss it between themselves. The Landlords then said that they did not need the assistance of their daughters and their daughters agreed to leave the conference call.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on November 1, 2009. On April 1, 2010, one of the Landlords' daughters served the Tenants in person with a One Month Notice to End Tenancy for Cause dated March 31, 2010. The Notice was signed by one of the Landlords and was on an old RTB form. On May 1, 2010, one of the Landlords' daughters served the Tenants in person with a One Month Notice to End Tenancy for Cause dated April 23, 2010. That Notice was also signed by one of the Landlords and was on the current form authorized for use by the RTB. The ground indicated on both Notices was that there was a "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlords claim that they advertised the rental unit as non-smoking and no pets allowed. The Landlords said that when the Tenants moved in, they had 2 cats and 2 dogs which they claimed they were just looking after temporarily for someone. The Landlords said the Tenants were dishonest because the pets, in fact, belonged to them and they still reside in the rental unit. The Landlords also claim that the Tenants are smoking inside the rental unit and that the smoke can be smelled in their residence in the upper suite of the rental property.

The Parties signed a tenancy agreement on February 8, 2010. An addendum to that agreement provides that "no smoking is permitted in the suite" and that the Tenants are not permitted to use the yard and must have their dogs on leashes when coming and going from the rental property.

The Tenants claim that they did not apply to cancel the One Month Notices to End Tenancy because one of the Landlords (J.A.B.) told them to ignore them. In particular, the Tenants said the Landlords had given them a written reference on March 22, 2010 but then a week later they received the first One Month Notice. The Tenants said that when they spoke to this Landlord about the Notice, he told them that it was his daughters' idea and that they should return the Notice to him which they did. The Tenants also claim that when they received the 2nd One Month Notice, the Landlord (J.A.B.) told them to ignore this Notice as well.

The Tenants said the Landlords were aware at all times that the pets they had belonged to them and that the Landlords were fond of them. The Tenants denied smoking in the rental unit and claim that they have never received a written notice from the Landlords telling them they were in breach of a material term of the tenancy agreement.

The Landlords denied telling the Tenants to return the 1st One Month Notice or that they should ignore either of the Notices. The Landlords said the only reason they gave the Tenants a written reference was because the Tenants told them it was necessary for court proceedings so that they could get their security deposit returned and then pay it to the Landlords. The Landlords argued that the 1st One Month Notice was the Tenants' notice that they were in breach of a material term of the tenancy agreement.

Analysis

Section 47(4) of the Act says that a tenant who receives a One Month Notice to End Tenancy for Cause must apply to dispute that Notice no later than 10 days after receiving it or else they are deemed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit on that day.

Even though the 1st One Month Notice dated March 31, 2010 was not on a current RTB form, I find that it substantially complies with the current form in use and contains all of the significant information about how to dispute the Notice that the current form has. Furthermore, the old form also uses the same section numbers of the Act that are currently in effect. Consequently, I find that the 1st One Month Notice served on the Tenants is an effective Notice. I also find that the 2nd One Month Notice to End Tenancy dated April 23, 2010 (which is on an authorized form) is an effective Notice.

The Tenants argued that the signature of one of the Landlords on the Notices was forged by her daughter. The Landlords claim that they signed the Notices and authorized their daughter to serve it on the Tenants. In the circumstances, I find that the Landlords did sign the Notices and have an agent serve them on their behalf.

The Tenants admit that they did not apply to cancel either one of the One Month Notices. The Tenants claim that the Landlords withdrew the One Month Notices by telling them to ignore them. The Landlords denied this and claimed that they served the

Notices on the Tenants because they were smoking in the rental unit and had pets. On this issue, the Tenants have the burden of proof and must show that the Landlords intended to withdraw the Notices. This means that if the Tenants' evidence is contradicted by the Landlords, the Tenants will need to provide additional, corroborating evidence to satisfy the burden of proof. Given the contradictory evidence of the Landlords and in the absence of any corroborating evidence from the Tenants, I find that the Tenants have not provided sufficient evidence to show that the Landlords withdrew the two One Month Notices to End Tenancy.

Section 66(1) of the Act says that the Director may extend a time limit under the Act but only in exceptional circumstances. Consequently, even if the Tenants believed that the Landlords had withdrawn the One Month Notices as they claimed, it should have been apparent to them when they were served with the Landlords' Application for Dispute Resolution in early May 2010 that the Landlords intended to enforce the Notices and the Tenants could have applied to cancel them at that time seeking an extension of the normal filing time limits under s. 47. However the Tenants have not applied for dispute resolution to cancel either of the One Month Notices.

Section 66(3) of the Act says that the Director may not extend the time to apply to make an application for dispute resolution to cancel a Notice to End Tenancy beyond the effective date of the Notice. The 1st One Month Notice dated March 31, 2010 says that the effective date is April 30, 2010. However, that Notice was served on the Tenants in person on April 1, 2010 and therefore, the earliest it could take effect was May 31, 2010. Consequently, pursuant to s. 53 of the Act, the effective date of the 1st One Month Notice is amended to May 31, 2010. As the effective date of the 1st One Month Notice dated March 31, 2010 has now expired, s. 66(3) bars the Tenants from now being able to apply late to cancel that Notice.

As a result, I find pursuant to s. 47(5) and s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. As the Landlords have been successful in this matter, I also find that they are entitled to recover the \$50.00 filing fee they paid for this proceeding and I order that they may deduct this amount from the Tenants' security deposit.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenants has been issued to the Landlords. A copy of the Order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia.

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: June 23, 2010.

Dispute Resolution Officer

