



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, OPB, MNR, MNDC & FF

Introduction

This hearing dealt with cross applications by the parties. The landlords seek an Order of Possession to enforce a 1 month Notice to End Tenancy for Cause and a monetary claim related to unpaid utilities. The tenant filed an application seeking a monetary claim for money owed or damage or loss suffered under the tenancy agreement or *Act*.

Both parties appeared and affirmed their oral evidence. Both parties also provided extensive documentary submissions. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

The landlords did attempt to amend their Application for Dispute Resolution on December 13, 2010 to increase the monetary portion of their application. I have not accepted the landlords' request to amend their application because the landlords did not serve the tenant with a copy of the amendment in a manner required by section 89 of the *Act*.

During the course of the hearing the tenant stated that her application was in response to the landlords' application seeking to enforce the 1 month Notice to End Tenancy for Cause and that she was not seeking a monetary claim against the landlords. The tenant indicated that she was directed to put in an arbitrary sum as part of the application and she had no particulars for the amount claimed. The tenant also confirmed that she did not dispute the notice to end tenancy.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession in enforcement of the 1 month Notice to End Tenancy?

Has the landlord established a monetary claim related to unpaid utilities?

Background and Evidence

This tenancy began on May 10, 2010 for the monthly rent of \$795.00 and a \$200.00 security deposit which the tenant paid on April 30, 2010. The written tenancy agreement stipulates that the tenant is to pay 1/3 of the utilities for electricity and heat. Despite having this term in the tenancy agreement, the landlord never requested that the tenant pay utilities until November 2010, six months after the tenancy began.

The tenancy agreement also included a clause that there was to be no smoking in the rental unit or on the premises. Like the utilities, the landlord did not enforce this term of the tenancy agreement until November 2010.

On November 8, 2010, the parties exchanged heated and acrimonious e-mails surrounding the tenant's smoking of marijuana for medicinal purposes. From the tenant's perspective this was the first time the landlords were making a complaint about her smoking which she had been doing since the tenancy began. The tenant also could not understand how her smoking could suddenly become a health and safety hazard for the landlords.

As the e-mail exchange unfolded, each party raised previously unspoken grievances including comments on how each party had improperly used the heat, laundry facilities and electricity. The tenant commented on the number of rules which the landlords wanted her to follow and questioned whether she should find another place to live. The landlords submit that one earlier written warning was provided to the tenant; however, the tenant denies that this was issued to her.

Although both parties contemplated the use of a vaporizer as an alternative method for the tenant to use her marijuana, the conflict escalated before it could be effectively utilized.

On November 12, 2010 the landlord issued the tenant a 1 month Notice to End Tenancy for Cause (the notice) stating that the tenant had significantly interfered with or unreasonably disturbed the landlord and seriously jeopardized the health or safety or lawful right of the landlord. The effective date of the notice is December 31, 2010.

The tenant did not dispute the notice and informed the landlords that she would be vacating the rental unit on January 5, 2011.

The tenant withdrew her monetary claim against the landlords and stated that she would vacate the rental unit as of December 31, 2010.

Analysis

The parties entered into a tenancy agreement which has two clear terms: 1) that there would be no smoking in the rental unit or on the premises and 2) that the tenant was to pay 1/3 of all utility costs. Unfortunately, neither party followed or enforced these terms which they agreed to at the start of the tenancy. If the parties had contemplated a different arrangement, such as allowing the tenant to smoke, it should have been reflected in the written tenancy agreement.

Section 47(4) of the *Act* provided the tenant with the legal right to dispute the notice to end tenancy by filing an application for Dispute Resolution within 10 days of receiving the notice. The tenant did not exercise this right and pursuant to section 47(5) of the *Act* is conclusively presumed to have accepted the end of the tenancy.

On this basis I grant the landlords' application and have issued an Order of Possession effective **December 31, 2010 at 1:00 p.m.**

I dismiss the landlords' monetary claim due to unpaid utilities. I accept the evidence before me that the landlords did not require the tenant to pay the 1/3 utilities and the landlord did not put the tenant on notice that they intended to enforce this term of the tenancy agreement or provide the tenant with a 30 day demand letter to pay the outstanding utilities as required by section 46 of the *Act*.

Conclusion

The tenant's application is dismissed.

The landlord's application is granted in part. I have issued the landlord an Order of Possession effective **December 31, 2010 at 1:00 p.m.** This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I deny each parties request to recover the filing fee paid for their applications.



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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: December 23, 2010.

Residential Tenancy Branch