

Decision

Dispute Codes:

CNC, OLC.

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated November 16, 2010 and effective December 31, 2010. Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted by proving that the tenant failed to pay the security or pet damage deposit within 30 days as required by the tenancy agreement or whether the Notice should be cancelled as requested by the tenant.

The burden of proof is on the landlord/respondent to justify the validity of the Notice.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was a copy of the One-Month Notice to End Tenancy dated November 16, 2010 and copies of correspondence from the landlord.

The landlord testified that the on October 1, 2010, the tenant took over an existing fixed term tenancy that would expire and convert to month-to-month as of May 31, 2010. The security deposit had already been paid in the past and was still being held by the landlord. The landlord testified that the tenant introduced a dog into the unit and was well aware that the tenancy agreement required the tenant to pay a pet damage deposit equivalent to one-half a month rent within 30 days, which would have been October 31, 2010. However, the tenant was given permission to pay the pet damage deposit by mid-November 2010. When the tenant failed to make this payment, the landlord issued a One-Month Notice to End Tenancy on November 16, 2010 with an effective date of December 31, 2010. The landlord stated that the tenant made no effort to pay the over-

due deposit but at the tenant's subsequent request she was then granted permission to pay the deposit by the end of November 2010. The landlord testified that it consented to issue a written retraction of the One-Month Notice, once the pet damage deposit was accepted and the landlord agreed that if the tenant complied it would not take steps to enforce the termination of the tenancy. According to the landlord, the tenant again failed to pay the pet damage deposit by the second deadline and instead made application for dispute resolution. The landlord's position was that the tenant was given two extensions in which to submit the required deposit and made no effort to pay the funds to date. The landlord wants the One-Month Notice enforced.

The tenant testified that she took possession of and sublet the lease on October 1, 2010, at which time her siblings and their dog also moved in to the unit. The tenant testified that, shortly thereafter she had a discussion with a representative of the landlord about payment of the required half-month pet damage deposit. The tenant testified that, although the deposit was required within 30 days, she was granted until mid November 2010 to pay the deposit. The tenant testified that she had every intention of paying this deposit, but on November 16, 2010, she suddenly received a One-Month Notice to End Tenancy for Cause citing the unpaid pet deposit. The tenant testified that she discussed the situation with the same representative of the landlord and was verbally granted a second extension permitting payment of the pet damage deposit by the end of November. The tenant stated that on November 9, 2010 she had received a series of complaints by mail from the landlord and she remained worried that the One-Month Notice would still be enforced by the landlord even if she paid the deposit. Fearing that the landlord would take steps to end the tenancy, she contacted the Residential Tenancy Branch for guidance. The tenant stated that it was suggested she obtain a written agreement from the landlord verifying that the deposit could be paid at the end of November and that this would function to cancel the One-Month Notice. The tenant testified that she followed up on this and spoke to the landlord's agent to request a written commitment confirming that the landlord would not enforce the One-Month Notice based on the tenant's promise to pay the pet damage deposit before December 1, 2010. The tenant stated that although she was assured that this would be done, she never received the promised written waiver from the landlord. In answer to the question about why the tenant failed to meet her commitment to pay the deposit before December 1, 2010, the tenant stated that she had already submitted an application for dispute resolution and felt it appropriate not to pay the deposit until the matter was dealt with at the hearing.

Analysis

Section 47(1) of the Act states that a landlord may end a tenancy by giving notice to if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement. That being said, I accept the applicant tenant's testimony that she was granted two extensions by the landlord to submit the pet damage deposit; the first one being granted prior to the Notice and the second one after she had already received the One-Month Notice.

I find that the tenant could have paid the deposit owed at any time prior to December 1, 2010 and this would have permanently cancelled the One-Month Notice as verbally promised by the landlord. I find that the tenant's fear that the landlord would still end the tenancy once she had fulfilled her commitment to pay the deposit, was not warranted because the landlord had not made any application seeking an Order of Possession based on its Notice. In fact, as of November 26, 2010, the tenant herself had applied for a dispute resolution hearing and I find that her concerns about being evicted could have been brought forth during these proceedings, whether or not the overdue pet deposit was paid as she had told the landlord would be done. I find that continuing to withhold payment of the deposit cannot be defended under the circumstances, particularly as the landlord had accommodated the tenant by granting extensions for the payment. I find it was not a reasonable expectation for the landlord to rescind its One-Month Notice prior to actual receipt of the payment that the tenant promised.

Given the above and based on the testimony and evidence presented, I find that the One-Month Notice issued by the landlord dated November 16, 2010 is justified and cannot, under the circumstances, be cancelled.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), on the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Notwithstanding the above, I find that because the landlord and tenant entered into a discussion to mutually extend the deadline for payment of the pet damage deposit until the end of November 2010, it is appropriate to alter the effective date shown on the Notice and I find that it must be changed to January 31, 2011.

Conclusion

Based on the above, I hereby issue an Order of Possession in favour of the landlord effective January 31, 2011. The tenant must be served with the order of possession. Should the tenant fail 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.

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 2010.

Dispute Resolution Officer