



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, MNR, FF, MT, CNC

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for more time to cancel a 1 Month Notice to End tenancy and to cancel the said notice.

By the landlord: as a cross application for an order of Possession for Cause; a Monetary Order for unpaid rent; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset, the landlord testified that the tenant paid rent for March 2011 for the full amount. Therefore the landlord's portion of his application for unpaid rent is dismissed.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the 1 Month Notice to End tenancy?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single room in a rooming house. It was not disputed that pursuant to a written agreement, the month to month tenancy started on April 1st, 2008, and that the monthly rent of \$425.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$212.50.

The landlord testified that the tenant allows prostitutes and their johns into his unit on a continual basis. He stated that they yell at him from the street to let them in, and that the tenant throws them the key from his window. The landlord said that once inside, these visitors often knock at other tenants' door and cause significant disturbance. He stated these incidents occur throughout the night, in spite of a clause of no visitors between 9:30pm and 9:00am specified in the tenancy agreement.

In his documentary evidence, the landlord submitted in part a petition signed by seven other neighbouring tenants that the applicant tenant allows strangers throughout the night; that they use drugs and leave needles in the shared bathroom; and that the tenant has removed the shared microwave oven and placed it in his room. The landlord also submitted a report detailing visitors, the times at which the attended the tenant's unit and their activities while on the property since March 7th, 2011.

There was no documentary evidence before me from the tenant. He testified that he has a petition signed by 9 out of 12 tenants who say nice things about him, and that the microwave belonged to him. He asserted that the complaints against him originated from one tenant in particular, who made sexual advances towards one of his female friends. The tenant said that he does not use drugs, that he does not have a TV or stereo, and that he does not make any noise. He stated that the visitors are his friends, not prostitutes.

Analysis

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy with cause does not make an application for dispute resolution within 10 days, 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. The 1 Month Notice to End Tenancy was dated January 27th, 2011. The tenant's application for dispute resolution is dated March 4th, 2011. The tenant has not filed his application within the allowed time and therefore I have no legal basis on which to cancel the notice.

The tenant objected to the landlord's characterization of the visits and his friends. However, based on the parties' testimony I find nonetheless that the tenant did have late night visitors, that their actions disturbed other tenants, and that the landlord had sufficient cause to serve the tenant with the Notice to End Tenancy.

For the reasons stated above, I dismiss the tenant's application to cancel the Notice to End Tenancy.

Section 55(1) of the *Residential Tenancy Act* states:

"If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) The landlord makes an oral request for an order of possession, and*
- (b) The director dismisses the tenant's application or upholds the landlord's notice."*

The landlord made an oral request for an order of possession at the hearing. Section 55(3) of the Act permits me to specify the date that the order of possession will take effect.

Conclusion

I have dismissed the tenant's application to cancel the landlord's Notice to End Tenancy. Pursuant to section 55(3) I grant the landlord an Order of Possession effective May 1st, 2011.

Since the landlord was partially successful, he is entitled to recover \$25.00 as partial satisfaction from the filing fee, which the landlord can retain against the tenant's security deposit.

This 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: March 18, 2011.

Residential Tenancy Branch