



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated March 3, 2011.

Both the landlord and the tenant appeared and each gave testimony in turn.

Preliminary Matter: Service of Respondent's Evidence

The applicant tenant had served the Application and documentary evidence on the landlord by registered mail. However, there was apparently a delay caused by a problem the Residential Tenancy Branch had notifying the tenant to pick up the hearing package. The landlord had finally received the documents from the tenant on March 18, 2011 and the landlord immediately submitted evidence to dispute the tenant's application. However, this evidence was not received in time for the hearing. The Residential Tenancy Rules of Procedure, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. I find that the applicant tenant did comply with this requirement but insufficient time was left for the landlord to reply and serve .

Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

I find that, through no fault of the landlord, the landlord's evidence did not arrive in time for the hearing. However, the evidentiary documents in question largely consisted of letters that were already sent to the tenant so it was determined that, in order to avoid an adjournment that would unfairly prejudice the respondent, the landlord was permitted to give verbal testimony by reading the documents into evidence.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled. This requires a determination of whether the tenant or persons permitted on the property by the tenant:

- significantly interfered with and or unreasonably disturbed other occupants or the landlord or;
- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord. The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that
- the tenant was repeatedly late paying rent;
- the tenant or a person permitted on the residential property by the tenant had
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant had engaged in illegal activity that
 - had caused or was likely to cause damage to the landlord's property,
 - had adversely affected or was likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - had jeopardized or was likely to jeopardize a lawful right or interest of another occupant or the landlord;

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end the tenancy under the Act.

Background and Evidence

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated March 3, 2011 with an effective date stated as April 2, 2011.

The tenancy began in October 2010 and the rent is \$900.00. The landlord testified that the One-Month Notice to End Tenancy was issued because of ongoing problems with regard to the tenant's failure to comply with the rules and the conduct of the tenant and her guests.

The landlord testified that the tenant had repeatedly paid the rent late. The tenant disputed this allegation and testified that she had attempted to pay the rent on time but the landlord had given her incorrect data about the bank account for the direct deposit.

With respect to the other causes listed for ending the tenancy, the landlord testified that prior to this One-Month Notice, the landlord had given repeated verbal warnings about various transgressions such as, cleaning up cigarette butts, doing car maintenance on the premises and disruptive noise complaints. The tenant admitted that at least one written warning was issued, after which there was an unfortunate violent incident relating to an unwanted visitor who attended a party given by occupants in the tenant's unit.

The landlord testified that the latest incident prompted the landlord to finally issue a One Month Notice to End Tenancy for Cause.

The tenant argued that not all of the verbal warnings from the landlord were for the same issue and that, once notified, she had immediately corrected the problems brought to her attention. The tenant felt that the One Month Notice to End Tenancy for Cause should be cancelled as there was not sufficient reason to terminate the tenancy.

Analysis – Notice to End Tenancy

It is necessary to establish whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47 of the Act.

The Guideline gives examples of what may constitute "significant Interference" including serious examples of:

- unreasonable and ongoing noise;
- persecution and intimidation;

- engaging in destructive or violent behaviour

In regards to the term, “unreasonably disturbed”, Black’s Law Dictionary defines “unreasonable” as:

“Irrational; foolish; unwise; absurd; preposterous; senseless;...
immoderate; exorbitant; ...capricious; arbitrary; confiscatory.”

In this instance I find that the tenant had, by her own testimony, engaged in conduct that the landlord and other residents found to be disruptive. I find that the landlord spoke to the tenant more than once about her violations and disturbing behaviour of her guests. I find that the tenant was warned to comply verbally and in written form.

I find that, despite the verbal warnings and the clear indication that if the tenant did not cease contravening the rules, the tenancy would be ended, problems continued and the landlord was justified in taking action.

Given the above, I find that the Tenant’s Application requesting that the Notice be cancelled is not supported under the Act by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. 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.

Conclusion

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant’s application without leave. I hereby grant the landlord an Order of Possession effective Saturday April 30, at 1:00 p.m.

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 2011.

Residential Tenancy Branch