



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application: CNC

Landlord's application: OPC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek to cancel a One Month Notice to End Tenancy for Cause issued October 31, 2011 (the "Notice").

The Landlord seeks an Order of Possession based on the same Notice; and to recover the cost of the filing fee from the Tenants.

The female Tenant and the Landlord's agents gave affirmed testimony at the Hearing.

It was established that the female Tenant served the Landlord's agent with the Tenants' Notice of Hearing documents on November 14, 2011, by handing the documents to the Landlord's agent at the rental property.

It was also established that the Landlord's agent served the Tenant with the Landlord's Notice of Hearing documents and copies of its documentary evidence, by handing the documents to the Tenants at the rental unit on November 18, 2011.

Issues to be Decided

- Should the Notice be cancelled or upheld?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on August 1, 2011. Rent is \$1,050.00 per month, due on the first day of each month. The Tenant paid a security deposit in the amount of \$525.00 on August 1, 2011. On October 31, 2011, the Landlord issued the Notice, which was served by hand on October 31, 2011, at the rental unit.

A copy of the tenancy agreement was provided in evidence. The female Tenant testified that the Landlord did not provide her with the last two pages of the tenancy agreement in its evidence package. The Landlord's agent insisted that all pages were included in the package that was provided to the Tenants.

The Tenant stated that she never received a copy of the signed tenancy agreement from the Landlord. Then she corrected her statement, indicating that she did receive it in September, 2011, but only after asking the Landlord's agent for a copy. The Tenant testified that she didn't have her copy anymore because she had to provide it to an agent for the Ministry of Social Development.

The tenancy agreement stipulates that a pet damage deposit was due, as follows: \$260.00 to be paid on August 1, 2011, and the "remaining \$260.00 to be paid by September 1, 2011".

The Tenants have not paid any of the pet damage deposit. The female Tenant testified that she tried to pay the pet damage deposit on October 22, 2011, but the Landlord refused to accept it. The Landlord's agent testified that the female Tenant offered to pay the Landlord half of the pet damage deposit on November 1, 2011, and the other half on December 1, 2011.

The Tenant testified that she tried to pay the Landlord the total deposit on October 31, 2011, but the Landlord refused to accept it and told the Tenant to use it for a security deposit somewhere else.

The Landlord's agent testified that the Tenant agreed to move out on November 30, 2011, if the Landlord would agree to return her security deposit by November 23, 2011. The Landlord's agent testified that it was against policy to return a security deposit before the end of a tenancy and that she suggested the Tenant use the money she had for the pet damage deposit to secure alternate accommodation.

Analysis

The onus is on the Landlord to prove, on the balance of probabilities, that the tenancy should end for the reason(s) stated on the Notice to End Tenancy issued October 31, 2011. The Notice to End Tenancy discloses the following causes to end the tenancy:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
3. Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

I am satisfied that the Tenant signed the tenancy agreement on August 1, 2011 and that the agreement required the Tenant to pay the pet damage deposit, as follows: \$260.00 on August 1, 2011, and \$260.00 on September 1, 2011.

Section 47(1)(a) of the Act states:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) 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;**

(emphasis added)

Based on the testimony of both parties, I find that the Tenant did not pay the pet damage deposit within 30 days of the date it was required to be paid under the tenancy agreement. Therefore, pursuant to the provisions of Section 47(1)(a) of the Act, I find that the Notice is a valid Notice to End Tenancy and it is upheld. I dismiss the Tenants application to cancel the Notice.

Having found that the Landlord has established the third reason to end the tenancy, I did not take evidence from either party with respect to the remaining reasons noted on the Notice.

I find that the effective date of the end of tenancy was November 30, 2011. The Landlord's application for an Order of Possession is granted, **effective 2 days after service of the Order upon the Tenants.**

The Landlord was served with the Tenant's application on November 14, 2011. The Landlord filed its application on November 15, 2011. Section 55 of the Act states that if a tenant's application to cancel a notice to end a tenancy is dismissed and at the time scheduled for the hearing the landlord makes an oral request for an order of possession, the director **must** grant an order of possession. Therefore, I find that the Landlord's application filed November 18, 2011, was not necessary and I decline to grant the Landlord's request to recover the cost of the filing fee from the Tenants.

Conclusion

The Tenants' application is **dismissed.**

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord's application to recover the cost of the filing fee from the Tenants is **dismissed**.

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 02, 2011.

Residential Tenancy Branch