



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, MNDC, AS, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order cancelling a Notice to End Tenancy for Cause and for Landlord's Use – Sections 47 and 49;
2. A Monetary Order for compensation for loss - Section 67;
3. An Order allowing the Tenant to sublet – Section 65; and
4. An Order to recover the filing fee for this application - Section 72;

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Tenant requested an adjournment. The Tenant states that at the beginning of January, his pain medication had been changed causing nausea and vomiting and that this caused him to be unable to prepare and submit evidence to support his claim. The Landlord objected to the adjournment and states that he wishes to proceed in order to move forward with the Tenant's dispute of the Notices. Noting that the Tenant's application was made on December 16, 2011, I find that the illness referred to by the Tenant occurred at least two weeks after the application was made and that sufficient time was provided for the Tenant to gather and submit evidence prior to the change in medication and resulting illness. Accordingly, the Tenant's request for an adjournment is denied.

Issue(s) to be Decided

Are the Notices to End tenancy valid?

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy began on June 25, 2010. Rent in the amount of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$500.00. The Tenant lives in a basement suite of a house occupied by the Landlord.

On December 10, 2011, the Landlord served the Tenant with a one month notice to end tenancy for cause with three reasons, one of which is repeated late payment of rent. It is noted that the effective date of the Notice is stated as January 15, 2012. The Landlord states that the Tenant has been repeatedly late paying rent. The Landlord states that the Tenant was late in July and August 2011 and January 2012. Further, the Landlord states that no rent at all was paid for November and December 2011. The Tenant states that he has no recall concerning the November and December rent and agrees that July and August rent was late. The Tenant states that the Landlord accepted late rent payments without informing the Tenant that there were any problems with late rents and argues that by the actions of accepting late rent without complaint that the Landlord therefore amended the lease agreement to allow such late payments. The Landlord requests an Order of Possession.

The Tenant states that since approximately October 2011, the Landlord's wife would repeatedly walk by the Tenant's unit outside and if a window in the Tenant's unit was open the wife would reach into the unit and close the window. The Tenant states that the wife would also reach into the main window if it was open and pull open the curtains to the unit. The Landlord states that his wife told him that she would not enter the unit but would knock on the door of the unit and ask the Tenant to close his window in order not to lose heat in the house.

The Tenant states that on or about December 9, 2011, the Tenant went to the Landlord's door to pay rent and when the Tenant asked for a rent receipt, the Landlord

became verbally abusive and threatened to evict the Tenant and remove the Tenant's belonging from the unit. The Tenant states that the police were called for this incident and attended the Landlord's home. The Landlord denies that he yelled at the Tenant but agrees that the police did attend his home and spoke with him to inform him that he could not arbitrarily remove the Tenant's belongings.

The Tenant states that the actions of the Landlord's wife was a breach of privacy and that the threats from the Landlord, which were more upsetting to the Tenant than the actions of the wife, were a breach of his quiet enjoyment of the unit. The Tenant claims the amount of \$500.00.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. In relation to the Notice to End Tenancy for Cause, given the evidence of the Landlord of repeated late payment and considering the Tenant's evidence that some rent payments were late and other payments could not be recalled, I find that the Landlord has substantiated, on a balance of probabilities, that the Tenant has been repeatedly late paying rent and that the Notice is valid. Given this finding, there is no need to consider any of the remaining reasons for cause and I dismiss this part of the Tenant's application.

Section 55 of the Act provides that where a tenant's application to dispute a landlord's notice to end a tenancy is dismissed or where the Notice is upheld and the landlord makes an oral request for an order of possession, such an order must be granted.

As I have dismissed the Tenant's application to cancel the Notice and as the Landlord requested an Order of Possession at the hearing, I find that the Landlord is entitled to an Order of Possession. As the Landlord has been found to be entitled to an Order of Possession on this basis, I decline to consider the second Notice to End Tenancy for

Landlord's use. It should be noted that section 47 of the Act provides that a landlord may serve a notice to end tenancy for cause with an effective or move-out date not earlier than one month after the date the Notice is served and on the day before the day that rent is payable. Further, section 53 of the Act provides that where a Landlord gives a Notice with an incorrect effective date, this date is automatically corrected to comply with section 47. As the Landlord has placed an incorrect effective date on the Notice, this date is therefore automatically corrected to January 31, 2012 in order to comply with the Act and the Order of Possession will be effective on this date as well.

As the tenancy is ending, I dismiss the Tenant's application in relation to allowing a sublet.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment, including the right to reasonable privacy and freedom from unreasonable disturbance. Given that the Landlord did not deny that his wife attended the unit on several occasions to require that the Tenants close their windows, I find that such actions are unreasonable and an invasion of the Tenant's right to quiet enjoyment of the unit. Given that the Landlord did not deny threatening to remove the Tenant's belongings from the unit, I find that this action also breached the Tenant's right to freedom from unreasonable disturbance. Accordingly, I find that the Tenant is entitled to the claimed amount of \$500.00 as compensation for these breaches and I order the Landlord to provide this amount to the Tenant forthwith.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on January 31, 2012. The Tenant must be served with this **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.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$500.00**. If necessary, this order may be filed in the Small Claims Court 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: January 05, 2012.

Residential Tenancy Branch