



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting that a notice to end tenancy be cancelled.

Both parties appeared, gave testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the notice to end tenancy issued by the Landlord be cancelled or not?

Background and Evidence

The Tenant confirms that he received a notice of eviction which was in the form of a handwritten letter from the Landlord dated February 03, 2012, stating that they wished to end his tenancy on February 25, 2012. The Tenant submitted a copy of the letter, which states that it is a “notice of eviction”, from the Landlord into evidence.

The notice served by the Landlord is not in a form provided by the Residential Tenancy Branch.

The Landlord stated that they did not know a proper Notice form was required, and thought that they could issue the letter as is. The Landlord stated that they feel they have sufficient evidence to end the tenancy for cause. The Landlord also stated that they have not made an application for dispute resolution, but that they thought the eviction could be dealt with at the Tenant’s hearing. The Landlord stated that they would like the tenancy to end as soon as possible.

Both parties provided a copy of a Mutual Agreement to End Tenancy form into evidence, however only the Landlord has signed the document. The Tenant stated that he is not in agreement with ending the tenancy, he does not agree with the Landlord’s evidence, and is requesting that his tenancy continue.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47, 52, and 56 of the Act state the following:

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;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term, and

- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
 - (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;
 - (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
 - (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
 - (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;
 - (ii) the date specified in the order for the tenant to comply with the order.
- (2) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

Application for order ending tenancy early

56 (1) A landlord may make an application for dispute resolution to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
- (b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
 - (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I find that the Landlord has failed to issue a Notice in accordance with the Act by failing to use the correct form for a Notice and has not provided full month of notice as required by the Act where the reason for ending tenancy is for cause; as a result the notice issued by the Landlord is of no effect. The Landlord stated they want an early end to tenancy or an end to tenancy for cause, however, I find that the Landlord has failed to file an Application for dispute resolution and pay the filing fee required. I also find that the parties have not reached a mutual agreement to end the tenancy.

I find that the hand written letter entitled “notice of eviction” issued by the Landlord to the Tenant on February 03, 2012 stating that the tenancy will end on February 25, 2012 is of no effect.

Conclusion

I have granted the Tenant's request to continue the tenancy, as the notice issued to the Tenant was not issued in accordance with the requirements of the Act.

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 01, 2012.

Residential Tenancy Branch