



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MT, LRE, RR

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for more time to do so. The tenant also applied for an order to suspend the landlord's right to enter the rental unit and to allow a rent reduction for services not provided. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Has the tenant filed his application on time, or were there exceptional circumstances that prevented him from filing on time? Is the tenant entitled to a rent reduction?

Background and Evidence

The tenancy began on June 01, 2010. The rental unit is one half of a duplex. The rent is \$850.00 due on the first of each month. The tenant was required to set up the utility accounts in his name in order to receive gas and electricity. Prior to moving in the tenant paid a security deposit of \$425.00. Since the tenant has pets, he was required to pay a pet deposit. The tenant stated that he paid \$50.00 short at the start of tenancy, but paid the balance soon after. The landlord stated that the tenant did not pay the pet deposit. The tenant did not have a receipt to support her claim of having paid the deposit in full.

The landlord stated that he received several complaints against the tenants from the neighbours. The complaints were that the tenants fight and yell at each other at all hours of the day and night, have visitors come over also at all hours of the day and night and put the volume up high on their TV and music. The complainant also stated that the tenant attempted to steal from her and therefore she gave notice to end her tenancy.

In response to the complaints, the landlord served the tenant with several warning letters. The landlord filed some of the recent ones which are dated November 30, 2011, December 30, 2011 and January 11, 2012.

On January 30, 2012, the landlord served the tenant with a one month notice to end tenancy for cause. The reasons for the notice are that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant; the tenant has breached a term of the tenancy agreement and has not paid a pet deposit.

The tenant received the notice to end tenancy on January 30, 2012 and did not apply to dispute it within the legislated time frame of 10 days. The tenant was unable to provide a reason for the delay.

The tenant stated that he had no problems with the landlord until the property went into foreclosure and the landlord needed to sell the property. The tenant stated that the landlord requested him to sign a notice of entry for certain times through the month of February and the tenant did so. The tenant stated that the landlord was unreasonable in making this request. The tenant also accused the landlord of forging his signature on a statement confirming a conversation between the two parties in which the tenant agreed to end the tenancy.

The tenant stated that right through the tenancy, the hot water tank did not work. Having made this statement, the tenant proceeded to explain that he did not have a gas supply account for the first year of tenancy. He maintained that the supply was always present, but the tank did not work. Later the tenant stated that he had just set up his account in January 2012 and had received his first bill.

The tenant complained that he suffered inconvenience due to the broken water tank and had to take risks when he transferred hot water from the stove to the bathroom. The tenant wanted a reduction in rent for the lack of this service. The tenant agreed that he had not informed the landlord in writing, but stated that he had mentioned the problem to the landlord several times

Analysis:

Under section 47(4) of the Act, the tenant had to dispute the notice within 10 days, or by February 09, 2012. The tenant filed his application February 10, 2012. Therefore, I find the tenant failed to file his application to dispute the notice, in a timely manner.

Policy guideline 36 for the *Act* sets out that Dispute Resolution Officer may extend or modify a time limit ***only in exceptional circumstances***. The guideline explains the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a Dispute Resolution Officer to extend that time limit.

The word "exceptional" implies that the reason for failing to do something by the required time must be very strong and compelling. Furthermore, a "reason" without any force of persuasion is merely an excuse. Therefore, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I find the tenant had no evidence of a strong or compelling reason, or of exceptional circumstances, which would allow me to extend a time limit established by the *Act*. However since the tenant was only one day late, I agreed to extend the time limit.

In order to support the notice to end tenancy, the landlord must prove at least one of the following reasons.

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant
- the tenant has breached a term of the tenancy agreement
- the tenant has not paid a pet deposit.

Based on the documentary evidence and the verbal testimony of both parties, I find that the tenant did cause noise disturbances that significantly interfered with the landlord and the other occupant. Despite several warning letters, the disturbances continued.

Based on the testimony of the tenant himself, I find that the tenant failed to set up an account for gas supply and therefore was unable to use the hot water tank. In addition, the tenant admitted to scaring a plumber sent by the landlord, off the property, despite having received adequate notice from the landlord. Accordingly, I find that the tenant is not entitled to a rent reduction for the lack of hot water.

The landlord expressed fear for his safety and this concern seemed reasonable as during the hearing, both tenants indulged in screaming bouts. I had to remind the tenants several times during the hearing that they needed to focus their attention to the issues at hand and to refrain from acting in a belligerent manner.

Based on the testimony of both parties, the warning letters filed by the landlord and the lack of evidence to prove that the tenant had paid the pet deposit in full, I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession.

Under the provisions of section 55(1), 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.

Since the tenancy is ending, the balance of the tenant's application is moot and accordingly dismissed

Conclusion

I grant the landlord an order of possession effective on or before 1:00 pm on March 15, 2012.

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: February 14, 2012.

Residential Tenancy Branch