



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT; CNC

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued June 27, 2012.

Both parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by delivering the documents to the Landlord's office on July 23, 2012.

The Tenant acknowledged receiving the Landlord's documentary evidence on August 3, 2012.

The Landlord did not serve the Tenant with copies of its documentary evidence within the time limit set by the Rules of Procedure, however I note that the Notice of Dispute Resolution was ready for the Tenant to pick up on July 17, 2012, and was not provided to the Landlord within three days pursuant to the provisions of Section 59(3) of the Act.

Preliminary Matter

The Landlord's agent testified that the Notice was handed to the Tenant on June 27, 2012. Section 47 of the Act requires a tenant to file an Application to dispute a notice to end tenancy for cause within 10 days of receiving it. In this case, the Tenant did not file his Application until 19 days after he received it. The Tenant did not indicate on his Application that he was seeking an extension of time in order to file his Application however he stated during the Hearing that that was his intent. Therefore, I amended his application to include that request, pursuant to the provisions of Section 66 of the Act.

The Tenant testified that he had been ill and that at first he thought that the Notice was just a duplicate of a notice to end tenancy that he had received in May, 2012, which he had "won already". I accepted that the Tenant initially mistook the Notice for a copy of the notice to end tenancy issued in May, and under the circumstances allowed the Tenant's application for an extension of time to dispute the Notice. The Hearing continued.

Background and Evidence

The Landlord's agent gave the following testimony:

- As a result of incidents occurring between December 31, 2011 and April 30, 2012, and written complaints from other occupants, the Landlord gave the Tenant two warning letters, dated January 6, 2012 and April 25, 2012, telling him that if he did not cease causing disturbances the landlord would issue a one month notice to end the tenancy. Copies of the letters of complaint and the warning letters to the Tenant were provided in evidence.
- The Landlord received another written complaint on April 30, 2012. A copy of that letter was also provided in evidence.
- The Landlord served the Tenant with a notice to end the tenancy for cause on May 4, 2012. A copy of that notice was provided in evidence, which indicates the following reasons for ending the tenancy: Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. On May 14, 2012, the Tenant filed an Application for Dispute Resolution disputing this notice and a Hearing was set for June 5, 2012.
- On May 15, 2012, the Tenant wrote to the Landlord. A copy of the letter was provided in evidence. In the letter, the Tenant writes, in part, "I will not fight the eviction and will be out by June 15, 2012 with a clean freshly painted unit drapes and carpet as well." The Landlord did not attend the Hearing on June 5, 2012, because the Landlord believed that the Tenant was not going to challenge the May 15th notice to end tenancy. The Tenant attended the Hearing and the May 15th notice was set aside.
- The Tenant continues to disturb other occupants in the rental unit. On June 27, the Landlord received another letter of complaint from other occupants in the rental property. The Landlord issued the Notice and served the Tenant on June 27, 2012. On June 29, 2012, the Landlord received another letter of complaint about the Tenant's "swearing and banging". The Landlord sent the Tenant another letter on July 9, 2012, reminding him that the Notice issued June 27 remains in effect and that the effective end-of-tenancy date is July 31, 2012.
- The other occupants are now threatening to file their own applications against the Landlord for compensation for loss of peaceful enjoyment.

The Tenant gave the following testimony:

- The Tenant received the notices to end the tenancy, but no warning letters except for the letter dated July 9, 2012. If the letters were posted on his door, he might not have received them because other occupants take them down.

- He is unaware of any petitions from other occupants in the building.
- The Tenant acknowledged that he wrote the letter on May 15th telling the Landlord that he was not going to fight the eviction, but he changed his mind. He had been advised to go the Hearing on June 5, 2012 and to fight the eviction because he wasn't given any warning letters. The Tenant did not tell the Landlord that he had changed his mind.
- The Tenant is sometimes loud because of an illness that he suffers from.
- The Tenant wants to move because he is unhappy in the rental property, but he needs more time. He asked to be allowed to stay until the end of August, 2012.

The Landlord's agent gave the following reply:

- The Landlord gave her strict instructions to seek an Order of Possession for the earliest possible date.

Analysis

The Notice provides the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The notice that was issued on May 4, 2012 was found to be invalid as the Landlord did not appear at the Hearing on June 5, 2012 to prove the reasons to end the tenancy. Therefore, I cannot consider any reasons for ending the tenancy prior to May 4, 2012. However, I do find that the Notice itself served as a warning to the Tenant that his behavior was unacceptable to the Landlord and to other occupants in the building.

The Tenant acknowledged that, because of his illness, he does get loud on occasion. Based on the testimony and documentary evidence provided, I find that the Tenant significantly interfered with other occupants on June 8, 2012, by swearing and banging and that the Landlord's Notice is a valid notice. The Landlords have a responsibility to the other occupants under Section 28 of the Act to provide them with freedom from unreasonable disturbance. I dismiss the Tenants' application to cancel the Notice to End Tenancy.

Section 55(1) of the Act states:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of

possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the testimony of the parties, I am satisfied that the Tenant received the 1 Month Notice to End Tenancy on June 27, 2012. I find that the effective date of the end of the tenancy was July 31, 2012, and that therefore the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia 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: August 08, 2012.

Residential Tenancy Branch