



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, for monetary compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 20, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the absence of the Tenant.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is there damage to the unit, site or property and if so how much?
3. Is the Landlord entitled to compensation for damage and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2012 as a month to month tenancy. Rent is \$700.00 per month payable in advance of the 1st day of each month. The Tenant paid security deposit of \$350.00 in October, 2012.

The Landlord said he issued a 1 Month Notice to End Tenancy for Cause dated December 8, 2012 on December 8, 2012 to the Tenant is person. The Notice to End Tenancy has an effective vacancy date of January 8, 2013. The Landlord continued to say he issued the Notice because the Tenant has allowed more people in the unit than agreed to, the Tenant has significantly interfered with another tenant and the Landlord, the Tenant has seriously jeopardized the health and safety of another occupant and the Landlord, the Tenant has put the Landlord's property at significant risk, the Tenant has damaged the Landlord's property, the Tenant has jeopardized a lawful right of another tenant and the Landlord, the Tenant has breached a material term of the tenancy agreement and the Tenant has assigned or sublet the rental unit without the Landlord's written agreement. The Landlord said these are the reasons he checked off on the 1 Month Notice to End tenancy for Cause to end the tenancy.

The Landlord continued to say the Tenant is living in the unit so he has not repaired any damages to the unit and his claim at this time is only an estimate of the damages. The Landlord said he does not have a proven loss amount at this time.

The Landlord continued to say that he has issued a warning letter to the Tenant on December 6, 2012 for too much late night traffic in the rental unit and a request for a 24 hour inspection of the unit by the Landlord, which the Tenant would not agree too. The Landlord also said the Tenant has two dogs living at the unit and the tenancy agreement states to pets are allowed. The Landlord said this is a material breach of the tenancy agreement and this is grounds to end the tenancy.

The Landlord said he has received 3 verbal complaints from the upstairs tenants about the Tenant and the Tenant's guests making noise and smoking marijuana in the rental unit. The Landlord said he told the Tenant to stop this behaviour or he would have to evict her. The Landlord said the Tenant has not stopped this behaviour so he issued a 1 Month Notice to End Tenancy for Cause.

The Landlord said he understands that his monetary claim is not supported by any evidence at this time so he will reapply after he completes the repairs to the rental unit.

Analysis

Section 47 of the Act says:

- 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.

I accept the Landlord's testimony that the Tenant has broken a material term of the tenancy agreement by having 2 dogs living at the rental unit as the tenancy agreement state no pets are allowed. A material term of a tenancy agreement is a term that would be strong enough at the start of the tenancy to stop the tenancy from being entered into. The no pet cause in the tenancy agreement is considered to be a material term of an agreement because in normal situation the no pet cause would stop a tenancy from beginning if a tenant had pets. Consequently I find the Landlord has established grounds to end the tenancy because the Tenant has 2 dogs at the unit which is a material breach of the tenancy. I also find the Landlord has established ground to end the tenancy on the grounds of his warning for noise and traffic in the night has not been corrected by the Tenant.

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 5 days after it is sent by registered mail, or on December 25, 2012. Consequently, the Tenant would have had to apply to dispute the Notice by January 4, 2013.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect January 31, 2013.

With respect to the Landlord's monetary claims I find the Landlord has not established grounds to prove the actual loss nor has the Landlord verified the losses with invoices or receipts; therefore I dismiss the Landlord's monetary claims and request to retain the Tenant's security deposit as partial payment for damages with leave to reapply.

I also find that as the Landlord was partially successful in this matter he is entitled to recover the filing fee of \$50.00 for this proceeding from the Tenant. I order the Landlord to retain \$50.00 from the Tenant's security deposit as full payment of the filing fee for this proceeding.

Conclusion

An Order of Possession effective at 1:00 p.m. on January 31, 2013 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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 22, 2013

Residential Tenancy Branch

