



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC / OPC

Introduction

This hearing was scheduled in response to an application by the tenants for cancellation of a 1 month notice to end tenancy for cause / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement.

The hearing was scheduled to commence at 1:30 p.m. on January 23, 2013. The landlord was present at that time and gave affirmed testimony. During the hearing the landlord made an oral request for an order of possession. As at 1:40 p.m. neither tenant had appeared and the hearing was then concluded.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written agreement created between the parties, the tenancy began on or about October 28, 2012. Monthly rent is \$850.00 and includes utilities. Rent is due and payable on the last day of the month which precedes the month for which rent is due. A security deposit of \$425.00 was collected.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy for cause dated December 13, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is January 13, 2013. Reasons shown on the notice in support of its issuance are as follows:

Tenant has allowed an unreasonable number of occupants in the unit.

Tenant or a person permitted on the property by the tenant has:

significantly interfered with or unreasonably disturbed another occupant or the landlord

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

damage the landlord's property

adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

jeopardize a lawful right or interest of another occupant or the landlord

The tenants filed an application to dispute the notice on December 21, 2012.

In response to the landlord's application for dispute resolution, a previous hearing was held on January 4, 2013. In her application the landlord sought an early end of tenancy arising from issuance of the 1 month, as above. By decision dated January 7, 2013, the Arbitrator found, in part, as follows:

I am not satisfied that the Landlord has met the burden of showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. I am satisfied that there **may** be cause to end this tenancy pursuant to section 47 of the Act; however, I do not find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect.

In summary, the landlord previously failed to meet the burden of proving the existence of grounds to end the tenancy early pursuant to section 56 of the Act which addresses **Application for order ending tenancy early**. However, during this present hearing the landlord confirmed that she still seeks an order of possession following from issuance of the 1 month notice. Further to all of the foregoing, the landlord testified that rent has not been paid for January 2013, and that she has now also issued a 10 day notice to end tenancy for unpaid rent.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants were served with a 1 month notice to end tenancy for cause dated December 13, 2012. The tenants filed an application to dispute the notice on December 21, 2012, which I find is within the 10 day period available for doing so after service of the notice.

Section 55 of the Act addresses **Order of possession for the landlord**, and provides in part as follows:

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.

The tenants did not attend the hearing scheduled in response to their application to dispute the 1 month notice and, during the hearing the landlord made an oral request for an order of possession. In the result, the tenants' application for cancellation of the 1 month notice is hereby dismissed, and I find that the landlord has established entitlement to an order of possession.

Pursuant to section 53 of the Act which addresses **Incorrect effective dates automatically changed**, I find that the 1 month notice issued by date of December 13, 2012, is effective January 31, 2013, not January 13, 2013 as incorrectly shown on the notice.

The tenants' application refers to a claim to recover certain costs for "photos." However, there are apparently no photos or related receipts in evidence before me. In any event, section 72 of the Act speaks to **Director's orders: fees and monetary orders**. Specifically, with the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to

either party to a dispute. Accordingly, this aspect of the tenants' application is also hereby dismissed.

Finally, as to the disposition of the security deposit at the end of tenancy, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

The tenants' application is hereby dismissed in its entirety.

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Thursday, January 31, 2013**. This order must be served on the tenants. Should the tenants 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.

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 23, 2013

Residential Tenancy Branch

