



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: OPR, OPC, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord applied for an order of possession for the rental unit due to unpaid rent, an order of possession for the rental unit due to alleged cause, monetary order for unpaid rent and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the applications or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue-The tenant did not mark on her application for dispute resolution that she was applying to dispute the 1 Month Notice to End Tenancy for Cause, although one had been submitted into evidence. When questioned, the tenant claimed that her application was to dispute both the 10 Day Notice and the 1 Month Notice.

I accept the tenant's submissions and I therefore have amended her application for dispute resolution to request cancellation of both Notices issued by the landlord.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the 1 Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid Rent?
2. Is the landlord entitled to an order of possession for the rental unit based upon either or both Notices, for a monetary order, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy started on October 19, 2012, that monthly rent is \$675.00 and that the security deposit paid by the tenant was \$337.50.

Pursuant to the Residential Tenancy Branch Rules of Procedure (Rules), the landlord proceeded first in the hearing to explain and support the Notices.

The landlord's agent said that he served the tenant a 1 Month Notice to End Tenancy for Cause on December 31, 2012; however, the tenant disputed the date and said that the Notice was served on December 30, 2012, as she had marked that date on her calendar. Due to the tenant's clear testimony, I accept that the tenant was served the 1 Month Notice to End Tenancy for Cause on December 30, 2012.

The Notice explains that the tenant had 10 days to dispute the Notice. It also explains that if the tenant does not file an application to dispute the Notice within 10 days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The effective move-out date listed on the Notice was January 30, 2013.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective move-out date is changed to January 31, 2013.

The tenant filed an application to dispute the Notice on January 16, 2013.

The causes as stated on the Notice alleged that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that the

tenant has engaged in illegal activity that has affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord said that the tenant had threatened the health and safety of another tenant in the rental unit, threatening physical violence, having drug addicts on the property and smoking both cigarettes and marijuana on the premises, in contradiction of the tenancy agreement.

In response the tenant denied making these threats, and that it was in fact the other tenant who had drug addicts and dealers come onto the property. The tenant also claimed the other tenant smoked the marijuana on the premises.

As to the portion of the landlord's application dealing with their monetary claim of \$607.50 for unpaid rent for January 2013, the landlord submitted that the tenant was deficient in rent for January by this amount and as a result, she was issued a 10 Day Notice to End Tenancy for Unpaid Rent listing this amount. The landlord's agent said this Notice was posted on the tenant's door on January 9, 2013.

The tenant denied owing this amount, although she said she agreed with the landlord's accounting statement listing payments made and received. The tenant said she owes less than \$200.00 for rent for January 2013, and acknowledged that she did not pay rent in February 2013, due to the landlord's Notices.

The landlord's relevant evidence included copies of the Notices, the tenancy agreement, an email from the landlord with a form of a tenant ledger sheet, and text messages between the tenant and another tenant of the residential property.

The tenant's relevant evidence included banking statements, handwritten submissions and a peace officer's report.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Landlord's application-

As the tenant confirmed receiving the 1 Month Notice to End Tenancy for Cause on December 30, 2012, the tenant was required to file an application in dispute of the Notice within 10 days, or in this case, by January 9, 2013. As the tenant did not file her

application for dispute resolution until January 16, 2013, I find she did not apply to dispute the Notice within the required time allowed. I therefore find, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, in this case January 31, 2013.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective 2 days after service upon the tenant and have enclosed the order with the landlord's Decision.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order of possession, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. Costs of enforcement may be recoverable from the tenant.

As to the landlord's request for a monetary order, I find the landlord has provided sufficient evidence, through their accounting sheet and through the tenant's confirmation that she agreed with the accounting sheet, to prove their monetary claim for a rent deficiency for January 2013 in the amount of \$607.50.

I also allow the landlord recovery of the filing fee of \$50.00.

Due to the above, I find the landlord has proven a monetary claim of \$657.50, comprised of unpaid rent of \$607.50 for January 2013, and the filing fee of \$50.00.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$657.50, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the tenant.

The landlord is at liberty to apply for dispute resolution for unpaid rent for February 2013.

Tenant's application-As I have granted the landlord's application for dispute resolution and granted them an order of possession for the rental unit and a monetary order, I dismiss the tenant's application seeking cancellation of the Notices, without leave to reapply.

Conclusion

The landlord has been issued an order of possession for the rental unit and a monetary order for \$657.50.

The tenant's application is dismissed, without leave to reapply.

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* and is being mailed to both the applicant and the respondent.

Dated: February 14, 2013

Residential Tenancy Branch

