



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ash Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC, OPR, FF

Introduction

This hearing was scheduled in response to an application by the tenant for cancellation of a 1 month notice to end tenancy for cause / cancellation of a 10 day notice to end tenancy for unpaid rent / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on December 1, 2012. Monthly rent of \$650.00 is due and payable in advance on the first day of each month. A security deposit of \$325.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause dated March 31, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is April 30, 2013. Reasons shown on the notice in support of its issuance are as follows:

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:

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

Subsequently, the tenant filed an application to dispute the notice on April 3, 2013.

Arising from rent which remained unpaid when due on April 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated April 2, 2013. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is April 15, 2013. Subsequently, the tenant filed an application to dispute the notice on April 3, 2013, and on April 5, 2013 she paid all overdue rent in full.

During the hearing the parties undertook to achieve a resolution of their dispute.

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

Section 46 of the Act speaks to **Landlord's notice: non-payment of rent**. In particular, section 46(4) of the Act provides as follows:

46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Based on the documentary evidence and testimony, I find that the tenant paid the overdue rent in full within 5 days after being served with the 10 day notice. In the result, the landlord's 10 day notice is hereby set aside.

Section 63 of the Act addresses the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties led to a resolution.

In summary, the landlord testified that he does not presently seek an order of possession on the basis of the 1 month notice to end tenancy for cause dated March 31, 2013. This notice appears to have been issued principally on the basis of complaints the landlord claims to have received from other residents in the building. The complaints concern “a burning odor” or a “burning chemically cotton candy type odor” allegedly emanating from the tenant’s unit. The tenant considers that this odor may have arisen from her use of a particular air freshener and / or her burning of incense. The tenant has undertaken to discontinue using both of these items.

For his part the landlord has acknowledged the importance of formally notifying the tenant in writing, and in a timely manner, on any occasion(s) in future when a concern or complaint about this tenancy may arise. In this way, the landlord acknowledges the importance of providing the tenant with an opportunity to respond and / or to remedy the concern before the landlord feels compelled to issue a notice to end tenancy for cause.

Conclusion

The parties have settled their dispute.

For different reasons, as set out above, the landlord’s 10 day notice to end tenancy for unpaid rent, and the landlord’s 1 month notice to end tenancy for cause are both hereby set aside.

The tenancy continues in full force and effect.

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: April 30, 2013

Residential Tenancy Branch

