



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC / OPC

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 1 month notice to end tenancy for cause. Both parties and one witness for the landlord attended and gave affirmed testimony.

During the hearing the landlord's agent confirmed that the landlord seeks an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on May 16, 2002.

By letter dated March 11, 2013, the landlord's Executive Director informed the tenant that it appeared she had "an additional unregistered occupant residing in your unit who is not listed on the most recent Annual Tenant Profile and Annual Verification of Income." The tenant testified that she received this letter on March 11, 2013 after it had been delivered through / under the unit door.

In this letter the landlord instructed the tenant to have the occupant provide certain information to the landlord's office and complete attached forms before March 18, 2013. Further, in the landlord's letter the tenant was advised as follows:

Please note that failure to provide true information is a material breach of your Tenancy Agreement which could result in eviction.

The tenant testified that on March 18, 2013, she placed a telephone call to the Executive Director and left a voice mail message. The tenant also testified that in her

voice mail message she informed the Executive Director that the person in question “does not reside with me,” and she asked the Executive Director to return her call in order to “discuss the matter in further detail.”

The landlord’s agent in attendance to the hearing testified that the Executive Director informed him that she received no such voice mail message from the tenant.

Subsequently, after the tenant’s and the occupant’s failure to provide the information and documentation requested in the landlord’s letter of March 11, 2013, by letter dated March 19, 2013, the tenant received a “Final Notice.” In this “Final Notice” letter the tenant was instructed to provide the requested information by no later than March 25, 2013. The tenant testified that she received this particular letter by mail.

Thereafter, having received no information from the tenant or the occupant as requested, the landlord issued a 1 month notice to end tenancy for cause dated April 4, 2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is May 31, 2013. The reason identified on the notice in support of its issuance is as follows:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant filed an application to dispute the notice on April 12, 2013.

The landlord’s witness testified that the person in question (“JD”) is “always” around the unit and has been for an extended period of time.

The agent representing the landlord at the hearing drew attention to the relevant clauses in the written tenancy agreement, as follows:

ADDITIONAL OCCUPANTS

4. a) When the Tenant has an additional occupant who will reside with them for any length of time, the Tenant must inform the Landlord in writing;
- b) Any additional occupant(s) staying longer than sixty (60) days must provide income verification to the Landlord for rent calculation and pay their rent portion to the Landlord; and

- c) If the Tenant does not obtain the necessary approval for their additional occupant(s) from the Landlord, it is considered a breach of a reasonable material term of this tenancy agreement that will result in being served a notice of termination.

The tenant disputes that “JD” is an additional occupant. Rather, in her documentary submission and testimony she claims that “JD” comes to the unit to visit with their children “on a regular basis.” On occasions when she sometimes works late into the evening, she claims that “JD” “will stay with our kids at my residence and look after them.” Further, she writes:

As he does not have a vehicle, he may stay the night to avoid catching the buses late at night. Also, sometimes on the weekends, I may stay at my boyfriend’s house and [“JD”] will stay with the kids at my residence to watch them as he lives in a small basement suit in [another area] and it is not feasible to watch the children there.

Documentary evidence in support of her claims includes, but is not necessarily limited to, an undated letter from the tenant’s boyfriend, in which he asserts that “JD” does not reside in the rental unit.

As well, there is an undated letter from “JD” in which he asserts that he has lived elsewhere “for the past 12 years.” “JD” also claims that he attends the unit “to see my kids at their place a few days per week.” In his letter, “JD” states that he is unwilling to provide the landlord with copies of pay stubs “because it is none of their business.”

Further, there are copies of envelopes from correspondence addressed to “JD,” and “JD’s” driver’s license, all of which show a different address from the rental unit address.

Additionally, there is older documentary evidence such as a telephone bill naming “JD” which is dated June 6, 2011, a rent receipt issued to “JD” dated July 1, 2011, and a letter from “SD” dated July 24, 2007, in which “SD” confirms that his residential address is not the rental unit address.

Analysis

Section 47 of the Act addresses **Landlord’s notice: cause**, and provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(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;

Having considered the documentary evidence and testimony, I find that even if “JD” does not reside at the unit on a full time, 7 days per week basis, I am satisfied that the frequency and regularity of his presence and overnight stays is in excess of the frequency and regularity of a person who could be considered as simply a visitor. In this regard, I find the testimony given by the landlord’s witness to be highly credible.

I find that the frequency and regularity of “JD’s” presence at the unit is consistent with the thrust of the tenancy agreement, which is that a person who stays at the unit “for any length of time” is an “additional occupant.” To view “JD’s” presence as otherwise would, in my view, be contrary to the spirit and intent of the tenancy agreement.

It is understood that the template tenancy agreement now used by the landlord has been updated from the one used in this particular tenancy. Specifically, it appears that in the newer template, 14 days and not 60 days is identified as the critical threshold for determining whether a person may be considered an “additional occupant.”

Further, even if I accepted that the tenant left a voice mail message with the landlord’s Executive Director on March 18, 2013, which was the landlord’s deadline in the letter of March 11, 2013 for the provision of certain information, I find that a delay of 7 days serves to diminish the tenant’s credibility, particularly in circumstances where her tenancy was clearly at risk.

Even after the landlord’s “Final Notice” letter of March 19, 2013, there is no evidence that the tenant undertook to contact the landlord by way of either telephone or in writing. It was only after service of the 1 month notice dated April 4, 2013 that the tenant first produced a written response, which was to file an application for dispute resolution.

Section 55 of the Act speaks to **Order of possession for the landlord**, in part:

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.

Following from all the above, I find that the landlord has established entitlement to an order of possession on the basis of grounds identified in the 1 month notice to end tenancy. The tenant's application is therefore hereby dismissed.

As to the effective date of the order of possession, section 55(3) of the Act provides:

55(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

As well, section 68 of the Act addresses **Director's orders: notice to end tenancy:**

68(2) Without limiting section 62(3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy,...

In view of the mid-May date for issuance of this decision, and in consideration of an end of tenancy for a family which appears to include two school age children, I order that the effective date of the notice is changed from May 31, 2013 to June 30, 2013.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **Sunday, June 30, 2013**. This order must be served on the tenant. Should the tenant 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: May 14, 2013

Residential Tenancy Branch