



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEKHA HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF, CNC, MT

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by:

- The landlord for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application; and
- The tenant to cancel a 1 Month Notice to End Tenancy for Cause and to allow the tenant more time to make an application to cancel the notice to end tenancy.

Both parties served each other with a copy of the application and Notice of Hearing documents and confirmed receipt of the documents. Based on this, I find that the service requirements under the *Residential Tenancy Act* have been met.

Both parties attended the hearing and gave affirmed testimony. The landlord and tenant were given the opportunity to cross examine each other on the evidence provided. All the affirmed testimony, including documentary evidence submitted prior to the hearing, has been carefully considered in this Decision.

Issue(s) to be Decided

- Has the tenant justified the reasons for making an application to dispute the notice to end tenancy outside of the allowable time limits?
- Is the tenant entitled to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord?
- Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

Both parties agreed that the tenancy started on May 1, 2013 on a month-to-month basis. A signed written tenancy agreement was completed and rent in the amount of

\$750.00 is payable by the tenant on the first day of each month. The landlord collected a security deposit from the tenant before May, 2013 in the amount of \$375.00.

The landlord testified that since the short time the tenant has taken occupancy of the 3rd floor unit in the building complex, the tenant has engaged in a course of action that has led to a serious disturbance of the other occupants as well causing significant damage to the building.

The landlord received numerous complaints regarding: loud music played by the tenant in the early hours of the morning; the non removal of garbage by the tenant from the unit which left a putrid smell in the building. The tenant also, on three occasions, caused the flooding of the rental apartment to an extent where the water leaked through other units on the two levels below including the electrical room on the ground floor.

As a result the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on May 16, 2013 with an expected move out date of June 16, 2013. The notice, provided as evidence, states the following reasons for ending the tenancy:

- The tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardised the health, safety or lawful right of another occupant or the landlord; and, put the landlord's property at significant risk.
- The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security and safety or physical wellbeing of another occupant or the landlord.

The landlord presented eleven witness statements provided by the tenant's neighbours and residents of the building detailing the tenant's conduct in the rental unit. The landlord also presented photographic evidence of the damage that had been caused by the tenant and testified that the Order of Possession was needed so that continual damage of wet dry wall could be stopped. The landlord also provided a copy of the addendum accompanying the signed tenancy agreement which specified that the playing of loud music after 10 p.m. was prohibited.

The landlord also testified that the tenant had made a number of threats to the owners of the building and provided the landlord's witness statements for these events obtained from the Victoria Police Department.

The tenant testified that the notice to end tenancy was received in person on May 16, 2013, and that he went to the Residential Tenancy Branch to dispute the notice two days later. The tenant could not remember the exact date but disputed the fact that the application was stamped as being made on May 28, 2013. The tenant was unable to provide an explanation as to why the application was made to dispute the notice outside of the ten day time limit afforded to the tenant under the *Act*.

The tenant testified that the flooding was caused by a broken refrigerator which the landlord failed to fix after they were notified of this. In addition the tenant testified that the flooding was also caused by hair balls stuck in the pipes. The tenant denied playing loud music and making threats to the landlord. The tenant further testified that the smells coming from the rental unit were due to cooking and was not due to rotten garbage as claimed by the landlord.

Analysis

The tenant testified that he had received the notice to end tenancy on May 16, 2013 as per the same date noted on the Tenant's Application for Dispute Resolution. In accordance with Section 48(5) of the *Act*, the tenant had until May 26, 2013 to dispute the notice. However, the tenant claims the notice was disputed a few days after May 16, 2013, but the application is dated May 28, 2013. Therefore, I find the tenant applied outside of the 10 day time limit afforded under the *Act*. Without a reasonable explanation by the tenant for applying outside of the allowable time limit, I dismiss the tenant's application in its entirety.

In relation to the landlord's application, I accept the evidence before me that the tenant failed to dispute the notice **within** the 10 days granted under the *Act* and as a result, I find that the tenant is conclusively presumed under Section 48(6) of the *Act* to have accepted that the tenancy ended on June 16, 2013. Taking this into consideration, as well as the extensive and overwhelming evidence provided by the landlord's witnesses for the damage and disturbance caused by the tenant, and without reasonable explanation from the tenant, the landlord is entitled to an Order of Possession for cause.

Under Section 48(3) of the *Act*, the notice to end tenancy must allow the tenant one clear rental month's notice regarding the end of tenancy date. The notice was served to the tenant on May 16, 2013 and rent is payable on the 1st day of each month. Therefore, I find that the effective date of vacancy is automatically changed from June 16, 2013 on the notice, to June 30, 2013 pursuant to Section 53(1) of the *Act*.

Since the landlord has been successful in this application, I also award the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above:

- I dismiss the tenant's application without leave to re-apply.
- I grant the landlord an Order of Possession which is effective at 1:00 p.m. on June 30, 2013. This order must be served onto the tenant and may then be filed and enforced in the Supreme Court as an order of that Court.
- I award the landlord a monetary order for \$50.00. This order must be served onto the tenant and may then be filed and enforced in the Provincial Court (Small Claims) 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: June 24, 2013

Residential Tenancy Branch

