



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, MNR, MNSD, FF
Tenant: CNE

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Residential Tenancy Branch Rules of Procedures define a “cross application” as an Application for Dispute Resolution made to counter an existing application or made in response to a related Application for Dispute Resolution.

The tenant’s Application seeks to cancel a 1 Month Notice to End Tenancy for End of Employment and the landlord seeks, through his Application, to obtain an order of possession based on a 1 Month Notice to End Tenancy for Cause and a monetary order for unpaid rent. The tenant’s Application was submitted to the Residential Tenancy Branch on July 25, 2013 and the landlord’s on August 1, 2013.

As the tenant’s Application seeks to cancel one type of Notice to End Tenancy and the landlord’s Application seeks an order of possession based on a different type of Notice to End Tenancy, I find that the landlord’s Application cannot be made in response to the tenant’s Application or to counter the tenant’s existing Application. As such, I find these matters should not have been set to be heard as cross applications.

For this reason I heard only the tenant’s Application on this date and adjourned the landlord’s Application to a future date. Notice of the reconvened hearing is attached to this decision. This decision is a final and binding decision on the tenant’s Application and an interim decision on the landlord’s Application.

However, as the landlord did request an order of possession in his Application and the tenant has applied to cancel a Notice to End Tenancy, I consider the landlord's Application for Dispute Resolution to represent a verbal request for an order of possession should the tenant's Application be dismissed.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for End of Employment, pursuant to Section 48 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in his Application seeking to cancel the 1 Month Notice to End Tenancy for End of Employment it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The parties agree the tenancy began in November 2009 as a month to month tenancy for a current monthly rent of \$575.00 due on the 1st of each month with a security deposit of \$287.50 paid.

While the tenant testified that he received a 1 Month Notice to End Tenancy for End of Employment on June 31, 2013 when it was posted to his door; the landlord testified the tenant was issued a 1 Month Notice to End Tenancy for Cause on June 27, 2013 at which time it was served personally to the tenant.

The Notice states the tenant had 10 days to file an Application for Dispute Resolution to dispute the Notice. The tenant applied to dispute the Notice on July 25, 2013. The tenant testified that he did not apply sooner because he did not have money to do so until July 25, 2013. The tenant indicated he was not aware that he could have received a fee waiver and he could not remember when he contacted the Residential Tenancy Branch.

The landlord testified that he had noted on the Notice that the reasons for ending the tenancy were that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the tenant had defecated on the couch in the lobby and had on many occasions urinated in several common areas on the property such as at the

front door; in the lobby; and the elevator. The landlord also submits that because of the tenant flicks cigarettes off of his balcony into bark mulch below his unit a fire was started.

The tenant states that he has done none of these things but that it is the fault of other tenants and/or their dogs that live in the building.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I find it unlikely the tenant received the landlord's Notice to End Tenancy on June 31, 2013 as per the tenant's testimony because June has only 30 days. I find the landlord's testimony of the date of service of the 1 Month Notice to be more reliable.

I find that the tenant was served with notice to end tenancy as declared by the landlord by personal service on June 27, 2013 and the effective date of the notice was July 31, 2013.

In addition, because the tenant failed to file his Application to dispute the notice until July 25, 2013, nearly a month after receiving the Notice I find the tenant failed to submit his application within 10 days as allowed under Section 47(4) and the tenant is conclusively presumed under Section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I therefore dismiss the tenant's Application in its entirety.

Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice.

As I have dismissed the tenant's Application seeking to cancel the Notice to End Tenancy and the landlord has requested an order of possession, pursuant to Section 55 I find the landlord is entitled to such an order.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: August 29, 2013

Residential Tenancy Branch