



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, RP
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 / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and an order instructing the landlord to make repairs to the unit, site or property. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that she 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 any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began on October 1, 2008. Monthly rent is \$550.00 and monthly parking is \$10.00 [total: \$560.00]. A security deposit of \$275.00 was collected.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy for cause dated August 15, 2013. The notice was served by way of being slid under the hallway entrance door to the unit 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 September 15, 2013. The reason identified on the notice in support of its issuance is as follows:

Tenant or a person permitted on the property by the tenant has:

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The tenant filed an application to dispute the notice on August 23, 2013.

The particular incident which led to issuance of the notice was a physical altercation between the tenant and another resident in the building which occurred on August 11, 2013. It is understood that the matter is before the Courts. In the meantime, the tenant was placed on a bail order.

During the hearing the parties tried to achieve a measure of settlement of the 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

The tenant queried whether the landlord's method of serving the 1 month notice complies with the Act. In this regard, section 88 of the Act addresses **How to give or serve documents generally**. Further, section 71 of the Act speaks to **Director's orders: delivery and service of documents**, and provides in part as follows:

71(2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of this Act.

The tenant testified that he found the 1 month notice "on the floor just inside my suite" when he returned home on August 15, 2013. Thereafter, the tenant filed his application to dispute the notice within the 10 day period available for doing so pursuant to section 47(4) of the Act. In consideration of all these circumstances, I find that the 1 month notice was "sufficiently served for the purposes of this Act" on August 15, 2013.

Arising from the reason identified on the notice in support of its issuance, the attention of the parties is also drawn to section 47(1)(d)(ii) which specifically provides as follows:

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

(d) the tenant or a person permitted on the residential property by the tenant has

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,...

Section 63 of the Act speaks to **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a measure of resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenant will vacate the unit by not later than **Saturday, November 30, 2013**, and that an **order of possession** will be issued in favour of the landlord to that effect.

As the end of tenancy nears, the attention of the parties is drawn to section 37 of the Act which speaks to **Leaving the rental unit at the end of a tenancy**, and section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Finally, the following **ORDERS** are issued to the landlord:

- 1) Provide the tenant with a copy of the **written residential tenancy agreement** by not later than **Noon, on Saturday, October 19, 2013** [see section 13(3) of the Act which provides that “within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement”];
- 2) Repair drainage under **kitchen sink** by not later than **Noon, on Saturday, October 19, 2013** [see section 32 of the Act which speaks to **Landlord and tenant obligations to repair and maintain**];

- 3) Repair or replace, as indicated, the **ceiling fan** by not later than **Noon, on Saturday, October 19, 2013.**

In view of the broad circumstances surrounding this tenancy, and the approaching end of tenancy, I find there is insufficient evidence of a need for further orders to be issued to the landlord.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **Saturday, November 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: October 07, 2013

Residential Tenancy Branch

