



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), and to recover the cost of the filing fee.

The tenant and an agent for the landlord (the “agent”) attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed that they received evidence from the other party and had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were sufficiently served in accordance with the *Act*.

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

The parties agreed that a fixed term tenancy agreement began on May 1, 2013 and reverts to a month to month tenancy after April 30, 2014. Monthly rent in the amount of \$895.00 is due on the first day of each month. A security deposit of \$447.50 was paid by the tenant at the start of the tenancy.

The tenant confirmed receiving a 1 Month Notice from the landlord dated February 26, 2014 on February 26, 2014. On that 1 Month Notice, the effective vacancy date is April 1, 2014. In the 1 Month Notice, the landlord has alleged five causes including:

1. The tenant has allowed an unreasonable number of occupants in the unit/site.
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
3. The 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.
4. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
5. The 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.

The tenant stated that he is disputing all five causes listed on the 1 Month Notice. The agent testified that the fifth cause regarding illegal activity was being withdrawn, as the agent stated that the fifth cause was added in "error". Given the above, I will not consider the fifth cause of the 1 Month Notice. Both parties confirmed that they did not have witnesses to present during the hearing.

The agent stated that her evidence relates to all four causes listed on the 1 Month Notice and referred to page 10 and 11 in the landlord's evidence. Page 10 indicates the date of February 8, 2014 does not include a unit number or name of the complainant on either page 10 or 11 of the document submitted in evidence. The agent stated that "others are intimidated by the tenant" as a reason to why page 10 and 11 do not include a name of the complainant or the unit number of the complainant. The document referred to by the agent does not include specific dates or times of the alleged complaints in the document.

The agent testified that on February 8, 2014 at midnight, she knocked on the door of the tenant and that although she could hear noise, nobody answered the door. The tenant testified that he was away from February 7, 2014 to February 9, 2014 and that he did not have any guests at his rental unit during that time period. The agent stated that the police were called and attended the rental unit on February 8, 2014 and that the police were able to talk to the tenant, according to what the tenant advised her. The tenant denied that he was home, that the police attended, and denies having any conversation with the agent about the police attending his unit on February 8, 2014. The agent was

unable to provide a police file number regarding the alleged incident, and confirmed that she did not witness the police attend the rental unit.

The agent referred to a mutual agreement between the parties regarding the tenant's noise level dated by the agent on June 8, 2013 and dated by the tenant on June 7, 2013, which was submitted in evidence. The tenant confirmed that he signed that document but denies that he or any guests caused the alleged noise resulting in the 1 Month Notice dated February 26, 2014. The tenant stated that he lives with his son and that he wishes to continue to reside in the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The 1 Month Notice dated February 26, 2014 has a stated effective vacancy date of April 1, 2014. The tenant disputed the 1 Month Notice within the ten day timeline provided for under section 47 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. I afford little weight to the document referred to as page 10 and 11 in the landlord's evidence, as the document does not include the name of the complainant or the unit number of the complainant. As a result, the complainant could not be cross-examined as the complainant has not been identified. In addition, the complainant failed to provide specific details such as the time and date of the complaints.

Further to the above, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof and alleged that the tenant advised her that the police attended the rental unit, which the tenant denied under oath. As a result, I find the landlord has provided insufficient evidence to support any of the four causes listed on the 1 Month Notice.

Based on the above, I find that the landlord has not met the burden of proof as the landlord provided insufficient evidence to prove any of the four grounds listed on the 1 Month Notice. Therefore, **I cancel** the 1 Month Notice dated February 26, 2014. The 1 Month Notice dated February 26, 2014 **is of no force or effect**.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application was successful, **I grant** the tenant the recovery of the cost of the filing fee in the amount of **\$50.00**. The tenant has been granted a monetary order in the amount of \$50.00 pursuant to section 67 of the *Act*. This order must be served on the landlord and may be enforced at the Provincial Court of British Columbia (Small Claims).

Conclusion

The 1 Month Notice issued by the landlord dated February 26, 2014, has been cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the *Act*.

The tenant has been granted a monetary order in the amount of \$50.00 for the recovery of the cost of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 15, 2014

Residential Tenancy Branch

