



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, OLC, RP

Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a notice to end tenancy issued for cause. The tenant seeks an order to cancel a notice to end tenancy issued for cause, an order for the landlord to comply with the Act, Regulations or tenancy agreement and a request for an order to make repairs to the unit, site or property.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence submitted by the other, I am satisfied that both parties have been properly served.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for an order for the landlord to comply with the Act and for an order for the landlord to make repairs. The tenant has confirmed in his direct testimony that these issues are unrelated and are not relevant to the dispute of cancelling a notice to end tenancy. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for cause, I dismiss these sections of the tenant's claim with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This tenancy began on April 1, 2011 on a month to month basis as shown by the submitted copy of the signed tenancy agreement dated March 27, 2011. The monthly

rent is \$750.00 payable on the 1st of each month and a security deposit of \$375.00 was paid on March 27, 2011. Both parties confirmed that the tenant surrendered the security deposit to the landlord to pay part of the rent during the tenancy.

Both parties confirmed that the landlord serve the tenant with a 1 month notice to end tenancy issued for cause dated April 23, 2014 in person at the rental unit. The notice displays an effective end of tenancy date of May 23, 2014 and that there were two reasons for cause selected.

- Tenant is repeatedly late paying rent.
- 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 landlord has submitted copies of 3 10 day notices to end tenancy issued for unpaid rent dated July 6, 2013, December 1, 2013 and January 1, 2014. The tenant confirmed that he was late paying rent for December 2013 and January 2014, but is unsure of July 2013. The landlord states that the tenant was late paying rent on more occasions, but was told by the information officer at the Residential Tenancy Branch Office that they only needed to provide 3.

The landlord thinks that the tenant is smoking/consuming marijuana/drugs in the rental unit as the landlord has detected the smell of marijuana near the rental. The tenant disputes this claim stating that he does not consume drugs.

The landlord states that the tenant threatened the landlord with physical harm and that the police were called. The tenant disputes that no threats have ever been made against the landlords.

The landlord states that the tenant made a false police report against the landlord by stating that the landlord threatened the tenant with a kirpan(knife). The tenant disputes this stating that there was an occasion where the landlord and several others attended the rental unit yelling. The tenant stated that he felt threatened and called the police. Both parties confirmed in their testimony that the police were called, but both are unaware of any charges filed.

Analysis

I accept the undisputed testimony of both parties and find that the tenant was served with the 1 month notice to end tenancy issued for cause by the landlord on April 23, 2014 in person.

On the landlord's reason for cause for repeatedly late paying rent, I prefer the evidence of the landlord over that of the tenant. In this case, the landlord has provided copies of 3 10 day notices to end tenancy issued for unpaid rent for July 2013, December 2013 and January 2014. The tenant stated in his direct testimony that he is confirming late rent payments for December and January, but is unsure of July. As the tenant has failed to provide any evidence to the contrary, I accept that the landlord has established a reason for cause of repeatedly late paying rent.

On the remaining issues of the second reason for cause that 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 the landlord, I find that the landlord has failed to provide sufficient evidence to satisfy me. The onus or burden of proof lies with the party who is making the claim. In this case, it is the landlord's burden. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. This portion of the application is dismissed.

The landlord has established grounds for their reason for cause to obtain an order of possession. The landlord is granted an order of possession. The tenant must be served with the order of possession. 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.

Conclusion

The landlord is granted an order of possession.

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 04, 2014

Residential Tenancy Branch

