



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, ET, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- an early end to this tenancy and an order of possession pursuant to section 56; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0943 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue: Service of Documents

The landlord testified that he served the tenant with the dispute resolution package on 21 October 2014 by registered mail. The landlord provided me with a Canada Post tracking number. On the basis of this evidence, I am satisfied that the tenant was properly served with notice of this application pursuant to sections 89 and 90 of the *Residential Tenancy Act* (the Act).

The landlord provided sworn, uncontested testimony that on 4 October 2014 he served an adult male who apparently resides with the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The landlord testified that the adult male refused to take the 1 Month Notice. The landlord testified that he touched the 1 Month Notice to the adult male, told the adult male that he was served and dropped the 1 Month Notice at the adult male's feet. The landlord saw the adult male pick up the 1 Month Notice. This exchange was witnessed. On the basis of this evidence, I am

satisfied that the tenant was served with the 1 Month Notice pursuant to section 88 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession? Is the landlord entitled to an early end to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including, miscellaneous letters and documents, and the testimony of the landlord's, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord and the tenant on 6 August 2014, indicating a monthly rent of \$850.00 due on the 1st day of the month for a tenancy commencing on 1 August 2014; and
- a copy of the 1 Month Notice delivered on 4 October 2014, with a stated effective vacancy date of 4 November 2014.

The 1 Month Notice cited the following reasons for the issuance of the Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord provided sworn testimony that:

- the tenant continues to occupy the rental unit;
- the landlord continues to hold the tenant's security deposit in the amount of \$425.00;
- the tenant had many people going into and from the unit;
- the tenant and persons the tenant permitted on the rental unit created excessive noise;
- he believed that the numerous people that attended the rental unit on bicycles were drug runners;
- the tenant often had cars stop in the back of the property go into the property and quickly leave;
- the police had attended at the rental unit; and
- the landlord had received calls, including calls in the middle of the night, from neighbours about the above-noted behaviour that required him to attend at the rental unit.

The landlord also applied for an early end to this tenancy.

At the hearing I asked what evidence the landlord intended to provide regarding his application to end the tenancy early. The landlord was unable to provide any testimony, witness statements or police reports as to why it would be unfair or unreasonable for the tenancy to conclude on the corrected effective date of the 1 Month Notice. I alerted the landlord to the requirement to provide evidentiary support and asked if he would like to withdraw this portion of his application. The landlord indicated that he wished to withdraw his application for an early end to the tenancy.

Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The landlord has set out in his 1 Month Notice, among other reasons, that the

tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord has provided uncontested and sworn testimony that the conduct of the tenant or persons the tenant has permitted on the residential property have significantly interfered with or unreasonably disturbed another occupant or landlord. Furthermore, the 1 Month Notice states that the tenant had ten days, from the date of service of that notice, to apply for dispute resolution or the tenant would be presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice. The tenant did not apply to dispute the 1 Month Notice within ten days from the date of service. For the reasons outlined above, I find that the 1 Month Notice is validly issued and will not consider the other reasons for cause set out by the landlord in the 1 Month Notice.

Pursuant to subsection 47(2), the earliest effective date for the 1 Month Notice to take effect would be 30 November 2014. The landlord has set an effective date in the 1 Month Notice of 4 November 2014. This effective date is too early. Section 53 operates in this case to change the effective date to 30 November 2014.

As the tenancy is ended 30 November 2014, the landlord is entitled to an order of possession for that date.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The evidence provided by the landlord indicates that he continues to hold the tenant's \$425.00 security deposit paid in August 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain a portion of the security deposit in full satisfaction of the \$50.00 filing fee.

Conclusion

The landlord is provided with a formal copy of an order of possession effective 1 pm on 30 November 2014. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I order the landlord to recover the \$50.00 filing fee from the tenant by allowing the landlord to retain \$50.00 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from \$425.00 to \$375.00.

The landlord's application for an early end to the tenancy is withdrawn.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 06, 2014

Residential Tenancy Branch

