



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MT, CNC, FF

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and call witnesses. The landlord called two witnesses.

The landlord testified that the 1 Month Notice was served on September 26, 2014 by registered mail. The tenant acknowledges receipt of this notice. Pursuant to section 88 and 90 of the *Act*, I deem the tenant served with this 1 Month Notice on October 1, 2014, the fifth day after the registered mailing.

The tenant testified that, in response to the 1 Month Notice, he sent the landlord a copy of his application for dispute resolution and the Notice of Hearing by registered mail on October 2, 2014. He provided the Canada Post Tracking Number to confirm the registered mailing. Based on the tenant's undisputed sworn testimony and in accordance with sections 89 and 90 of the *Act*, I find that the tenant's dispute resolution hearing package was deemed served to the landlords on October 7, 2014, the fifth day after the registered mailing.

I further find that the tenant's application has been made within the 10 days allowed to respond after receipt of the 1 Month notice and so find it unnecessary to consider the application for more time made by the tenant pursuant to section 66 of the *Act*.

The landlord made an oral request for an Order of Possession pursuant to section 55(1)(a) of the Act.

Issues to be Decided

Is the tenant entitled to more time to apply to cancel the landlord's Notice to End Tenancy?

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one year fixed term tenancy commenced on July 1, 2013. The rental continued on a month to month basis after July, 2014. Monthly rent is set at \$1,200.00, payable on the first of each month. The landlords continue to hold the tenant's \$600.00 security deposit paid on July 1, 2013.

The landlord entered into written evidence a copy of the September 26, 2014 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by October 31, 2014, the landlord cited the following reasons for the issuance of the Notice:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of 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;*

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

On an application by the tenant to cancel a notice to end tenancy, the burden of proof reverts to the landlord to justify, on a balance of probabilities, the cause described in the Notice to End Tenancy. The core of the landlord's claim is that the tenant has knowingly allowed a previously evicted resident ("the resident") to reside in the tenant's rental unit and that the resident has caused significant interference or unreasonable disturbance to other occupants and tenants of the residential property.

The landlord referred to documentary evidence in the form of a prior lease with the previously evicted resident and complaints that led to that resident's eviction. The landlord provided digital and photographic evidence to support their position that this previously evicted tenant was residing in the tenant's rental unit. The tenant confirmed, in his testimony, that this individual was residing with him and that he was aware this previous resident had been evicted from this residential property at the end of 2013. He submits, however, that the allegations of disruption and interference are unfounded.

The landlord referred to documentary evidence in the form of correspondence (two recent letters and emails of complaint) from two occupants at the residential property. Those letters complain of noise at late hours and confrontation by the previous resident in a common area. Two occupants of the residential property testified during this hearing on behalf of the landlord, one a writer of the documented complaints and another who had not made a formal, written complaint. Both witnesses testified that they are uncomfortable that the previous resident is in the building and that they have been and continued to be disturbed by noise, interruptive behaviour and incidents from the tenant's rental unit and his occupant. One witness testified with respect to a documented incident requiring emergency services to attend for the resident in the tenant's suite.

The tenant testified orally and in written submission that he has been disturbed by the interference of the landlord and the other occupants. While the tenant did not make an application for a remedy under this section, the tenant's letter refers to s. 28 of the *Act*; a tenant's right to quiet enjoyment including but not limited to, rights to the following; reasonable privacy and freedom from unreasonable disturbance as well as use of common areas without interference. The tenant testified that he has received no warning letters from the landlord prior to the issuance of the 1 Month Notice. The landlord testified that no warning letters have been provided to the tenant.

Analysis

Based on the nature of the testimony of both the landlord and the tenant, I do not find that the tenant has sublet his rental unit in an unauthorized fashion. I do not find that there is sufficient evidence to support allegations of illegal activity that may impact the residential property, its tenants or the landlord. However, I do find that he has allowed this previously evicted tenant to reside in his rental unit with full knowledge of the previous eviction. I find further that all of the landlord's evidence sufficiently demonstrates that the tenant has allowed this previously evicted resident to cause significant interference with the rights of the other tenants in this residential property in an unreasonable and ongoing manner.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. The landlord may, in some circumstances, attempt to mediate disputes between tenants. This situation, however, is exacerbated by the fact that the resident in the tenant's rental unit was previously evicted from the same property. The landlord previously used the appropriate process to evict this resident. Now, this resident is residing on the residential property without the permission of the landlord. In fact, the landlord has clearly advised this resident that they do not wish him to reside on the property. It is relevant that this permitted occupant of the tenant's was a previously evicted tenant. The tenant was clear that he is aware of all problems with respect to the resident's involvement in this tenancy and the previous tenancy but has taken no steps to address them.

On the basis of the tenant's testimony that he was aware of the nature of the relationship between the landlord and the resident in the past and given that he was also aware that there were current and ongoing issues between this resident and the other current tenants, I find that it was not necessary for the landlord to present warning letters in these circumstances. While tenants have rights, they also have obligations. The tenant, in this matter, did not meet those obligations leading to the current unsatisfactory situation.

Given all of the evidence presented in this hearing, I find that the tenant's actions in allowing the resident to live in this rental unit have unreasonably disturbed both other occupants and the landlord. Accordingly, I dismiss the tenant's application to cancel the notice to end tenancy. The Notice's effective date was October 31, 2014.

Based on the landlord's oral request, I find that the landlord is entitled to an Order of Possession to be effective by 1:00 pm on November 30, 2014

As the tenant was unsuccessful in this application, he bears responsibility for his filing fees for his application.

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed.

I grant an Order of Possession to the landlord effective **by 1:00 p.m. on November 30, 2014**. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I dismiss the tenant's application to recover his filing fee without leave to reapply.

As there was no need to consider the tenant's application for more time to submit his application for dispute resolution, this portion of the tenant's application is withdrawn.

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: November 26, 2014

Residential Tenancy Branch

