



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER CENTRAL RESIDENCE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, O

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated October 27, 2014 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- other unspecified remedies.

Both parties attended this hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant appeared personally and confirmed that his advocate, PB, had authority to speak on his behalf at this hearing (collectively "tenant"). The landlord OC ("landlord") appeared personally and confirmed that she had authority to appear as agent for the other landlord, COVCR (collectively "landlords").

The landlord testified that a 1 Month Notice was posted to the door where the tenant was residing, on October 27, 2014. The tenant confirmed receipt of the 1 Month Notice. on October 31, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 1 Month Notice.

The tenant testified that he personally served the landlord with the Application for Dispute Resolution hearing package ("Application") on November 5, 2014. The landlord OC testified that she received it as noted above. Section 89(1)(b) of the *Act* permits service of an application by leaving a copy with an agent of the landlord. The landlord OC is also agent for the landlord, COVCR. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were served with the Application on November 5, 2014.

The landlord testified that she served her written evidence package (“landlords’ evidence”) in response to the tenant’s Application, by posting it to the door of the tenant’s rental unit sometime in November 2014. The tenant testified that he received the landlords’ evidence sometime in November 2014. Although this method of service delivery is not one that is allowed under section 89 of the *Act*, the tenant confirmed receipt, stated that he had a chance to review the evidence with his advocate, he had notice of this hearing, and he confirmed that he was agreeable to proceeding with the hearing on the basis of the landlords’ evidence. In accordance with Section 71(2)(c), I find that the tenant was sufficiently served with the landlords’ written evidence package prior to this hearing.

At the outset of the hearing, the tenant’s advocate confirmed that he was withdrawing the tenant’s application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement and for other unspecific remedies. Accordingly, these claims are withdrawn.

This hearing proceeded on the issue to cancel the landlord’s 1 Month Notice. During the hearing, the landlord requested an order of possession against the tenant.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this periodic tenancy began on July 26, 2006. Monthly rent is payable in the current amount of \$375.00 due on the first day of each month. A security deposit of \$162.50 was paid by the tenant on July 19, 2006.

In accordance with subsection 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. The tenant filed his application for dispute resolution on November 5, 2014. Accordingly, the tenant filed within the ten day limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlords to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlords issued the 1 Month Notice stating that the tenant or a person permitted on the property by the tenant, significantly interfered with or unreasonably disturbed another occupant or the landlord.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The landlord, tenant and the tenant's advocate, confirmed that they understood and agreed to all of the following terms as a final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy continues under the current tenancy agreement, dated July 28, 2006, on a month to month basis for the month of December 2014;
2. Both parties agreed that December 2014 rent, already paid by the tenant for this tenancy, is accepted by the landlords for rent for the rental unit and not for use and occupancy only, as previously indicated on the landlord's rental receipt 403007, dated December 1, 2014;
3. Both parties agreed that this tenancy will convert to a fixed term tenancy of 3 months from January 1, 2015 to March 31, 2015, under the terms of the original tenancy agreement, dated July 28, 2006, with the exception of the length of tenancy provision;
4. Both parties agreed that the fixed term tenancy will end on March 31, 2015 if the landlords decide to end the fixed term tenancy, if they have received any complaints, whether verbal or written, from the two tenants, JG and GH, regarding loud noise by the tenant in the rental unit.
5. Both parties agreed that the fixed term tenancy can end earlier than March 31, 2015, if the tenant provides written notice to vacate the rental unit, to the landlords, in accordance with the *Residential Tenancy Act*;
6. Both parties agreed that the fixed term tenancy will convert to a month to month tenancy beginning on April 1, 2015, if the landlords do not receive any complaints or decide not to act on any complaints by March 31, 2015, from the two tenants, JG and GH, regarding loud noise by the tenant in the rental unit. A new tenancy agreement will be signed by both parties by April 1, 2015, for this new month to month tenancy, if applicable.
7. Both parties agreed that the landlords will provide the tenant with written notice as soon as reasonably possible, regarding any complaints, whether verbal or written, made by the two tenants JG and GH, regarding loud noise by the tenant in the rental unit.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

The landlord's 1 Month Notice, dated October 27, 2014, is cancelled and of no force or effect.

To give effect to the settlement reached between the parties, I order that this tenancy continue as outlined in the agreement above, using the same terms as established under the original tenancy agreement, unless this tenancy is to end by 1:00 p.m. on March 31, 2015, by which time the tenant will have vacated the rental unit.

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlords **only** if the tenant does not abide by the terms of the above agreement. The landlords are provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not abide by the terms of the above agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 17, 2014

Residential Tenancy Branch

