



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY (1974)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 3, 2014, by the Landlord to obtain an Order of Possession for cause.

The hearing was conducted via teleconference and was attended by two agents of the Landlord and the Tenant. As the Landlord is a corporation terms or references to the Landlord importing the singular shall include the plural and vice versa. Each party gave affirmed testimony and confirmed receipt of evidence served by the Landlord.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?

Background and Evidence

The undisputed evidence was that the Tenant has occupied the rental unit since November 2011 and has entered into subsequent tenancy agreements. The most recent agreement was a written fixed term tenancy agreement that began on May 1, 2014 and ended October 31, 2014, at which time the Tenant was required to vacate the rental unit, as per the Landlord and Tenant's initials agreeing to this term on the tenancy agreement. Rent was payable on the first of each month in the amount of \$435.00.

The Landlord testified that given the Tenant's recent behaviour they decided that they were not going to enter into another tenancy with the Tenant. So on September 23, 2014 they served him with a 1 Month Notice to end tenancy which was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk

The Landlords stated that they issued the 1 Month Notice because the Tenant has established a pattern of passing out while he has food cooking on the stove and the Landlord has had to call the fire department on three to five occasions due to the amount of smoke in his unit. Also, the Tenant's dog has been disturbing others and recently the Tenant's dog bit a neighbor. The SPCA has had to attend to complaints about the Tenant's dog on several occasions.

The Landlord submitted evidence to support that the Tenant failed to vacate the rental unit in accordance with the tenancy agreement and the 1 Month Notice. When considering the holiday season the Landlord decided to allow the Tenant to occupy the unit if he paid for use and occupancy for November and December. They stated that this would allow the Tenant more time to find other accommodations. The Landlord has engaged the services of two other agencies to help the Tenant but the Tenant has refused offers for other accommodations and continues to occupy the rental unit. The Landlord now seeks an Order of Possession for as soon as possible. No money has been accepted from the Tenant for use and occupancy for January 2015.

The Tenant testified that he had received both a verbal eviction notice and the 1 Month Notice that was personally served to him at the end of September. He confirmed that he did not make an application to dispute the 1 Month Notice.

The Tenant confirmed that he had met with another agency in the Landlord's office and argued that they were offering him a rental unit in a building where drugs were allowed so he felt he could not take that unit as he did not want to expose himself to drugs as he was a recovering addict. He stated that he appreciates that the Landlord has allowed him to stay thus far and requested that he be given more time so he can find another place that he wants to move to and not just any other place.

The Tenant argued that he has never seen the fire department at his rental unit and he has never been contacted by the animal control officers. He argued that the rules have been changing recently to go against him and his dog simply to get him out. He stated that his dog bit another dog and not a person.

In closing, the Landlords disputed the Tenant's testimony stating his dog did bite a neighbour and they argued that the Tenant has chosen not to find another place as there are several places that would accept him as a tenant. They said he simply refused to accept offers from other places because he refuses to move.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Upon review of the 1 Month Notice to End Tenancy issued September 23, 2014, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. The effective date of the Notice was **October 31, 2014**.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case the Tenant would have had to file their application for dispute no later than November 3, 2014. At the time the Landlords filed their application for an Order of Possession on December 3, 2014, the Tenant had not made application to dispute the 1 Month Notice.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Section 44(1)(b) of the Act provides that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

The evidence supports that the Tenant entered into a tenancy agreement that was a fixed term tenancy that ended on October 31, 2014, and that the Tenant and Landlord

initialled the agreement at section 2(c) that states “the tenancy ends and the tenant must move out of the residential premises”.

After careful consideration of the totality of the above evidence, I find the Landlord submitted sufficient evidence to prove that this tenancy ended October 31, 2014. The Tenant has been occupying the unit after paying for “use and occupancy” up to December 31, 2014, which did not reinstate the tenancy. Therefore, the Landlord has lawful right to regain possession of the rental unit and I grant the Landlord’s request for an Order of Possession.

Conclusion

The Landlord has been granted an Order of Possession effective **2 Days upon Service** to the Tenant. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

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: January 05, 2015

Residential Tenancy Branch

