



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord made an oral application for an order of possession should the tenant's application be unsuccessful.

Service of Documents

The tenant confirmed receipt of a 10 Day Notice to End Tenancy that was posted on the tenants' door on November 17, 2014. Pursuant to section 88 of the *Act*, the tenant was deemed served on November 20, 2014, 3 days after the posting of the notice. The effective date of the notice is November 30, 2014. On that same date, the tenant confirmed receiving a 1 Month Notice to End Tenancy for Cause effective December 31, 2014 also posted on the tenants' door.

The tenant testified that he served the landlord with the Application for Dispute Resolution package by registered mail on December 21, 2014. The landlord confirmed receipt of the package. The landlord was deemed served with the package on December 26, 2014, 5 days after its mailing.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled?

Should the landlord's 1 Month Notice be cancelled?

If these notices should not be cancelled, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award for loss arising out of this tenancy?

Background and Evidence

This month to month tenancy began September 1, 2005. The rental amount of \$700.00 was payable on the first day of each month. The landlord testified that there is no record of a security deposit paid with respect to this tenancy. The tenant made no claim that a deposit had been provided.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenants did not pay the November rent after receiving the 10 Day Notice on November 17, 2014. However, the tenants did apply for dispute resolution within the 10 day time period.

At this hearing of the tenant's application to cancel the notice to end tenancy, the landlord has made an oral application for an Order of Possession for unpaid rent for the months of November and December 2014. The landlord provided undisputed testimony that the tenants did not pay rent for the months of November and December 2014 due on the first of each month. As of the date of this hearing, the tenants continued to reside on the premises. Both parties testified that the tenants had not paid rent due on January 1, 2015 in addition to November and December 2014.

With respect to the 1 Month Notice issued by the landlord, the landlord testified that the tenant;

- practices target shooting on the residential premises;
- has made inappropriate comments to the child of at least one of the residents;
- has made threats with respect to a previous roommate, describing him as "shootable";
- has made comments to other residents and landlord that he will "burn down the property";

- has changed the locks to the rental unit and refused the landlord's entrance into that unit; and
- has harassed other tenants including the property manager, who lives on site.

The tenant testified that he;

- does conduct target practice with a pellet gun but he is usually at least 30 -100 metres away from any other residence when he does so;
- didn't *intend* inappropriate comments towards children;
- was angry when he spoke to people about his former roommate;
- was angry when he spoke of "burning down the place";
- does not dispute denying entry to the landlords;
- is not harassing anyone – he is just trying to resolve his tenancy issues and discuss them.

The tenant's witness, his new wife and another resident of the residential premises, testified on behalf of the tenant. She testified that there is mold within the tenant's rental unit. She testified that the property manager had advised herself and the tenant that the tenant did not have to pay rent as the living space was "toxic". There was no evidence provided that the unit had mold or was uninhabitable. She testified that the tenant resides in her rental unit on the residential premises at this time. Both the tenant and his witness testified that they did not provide any notice that they were vacating the tenant's rental unit.

The tenant confirmed the landlord's testimony that he has not paid rent for November, December or January. The tenant stated, in his testimony, "I'm not paying rent if I can't live there".

The landlord's witness, the property manager, testified to the difficulties she has had in dealing with the tenant. She also testified that it was her son to whom comments were made. Those comments discussed killing their pet cat. She also denied, in her sworn testimony, that she had told either the tenant or the tenant's witness that they need not pay rent.

Analysis

The landlord provided undisputed testimony that the tenant did not pay rent for the months of November and December 2014. As of the date of this hearing, the tenant continues to reside on the premises and the tenant has not paid rent due on January 1, 2015 in addition to November and December 2014.

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” The tenant is required to pay his full rent on the day that it is due according to his tenancy agreement. The tenant has not done so.

Because I find that the tenant has not paid his rent and the 10 Day Notice to End Tenancy in this matter is valid, I do not need to consider the grounds presented by the landlord for cause to end the tenancy. However, I do note that there appears to be concerning evidence with respect to interference and disturbance of other occupants of the residential premises.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the evidence of both the landlord and the tenant, I find that the tenant has not paid rent for the months of November 2014, December 2014 or January 2015. The tenant has not given notice to the landlord or formally vacated the rental unit. Therefore, I find that the landlord is entitled to a 2 day Order of Possession as requested at this hearing. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenant provided no evidence to support a claim for a monetary order for loss with respect to this tenancy. I dismiss the tenant's application with respect to any monetary claim.

Conclusion

I dismiss the tenant's application in its entirety.

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in 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: January 07, 2015

Residential Tenancy Branch

