



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LLA INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

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.

The tenant did not attend this hearing, although I waited until 1343 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agent (the agent) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent is the landlord's property manager.

The agent testified that he personally served the tenant with the dispute resolution package on 8 January 2015. As well, the agent testified that he served the dispute resolution package on 9 January 2015 by registered mail. The agent provided me with a tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that he personally served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 24 December 2014. The agent testified that he was accompanied by the onsite manager. 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.

Preliminary Issue – Late Evidence

The agent testified that he served the tenant with a second package of evidence, which included a petition signed by various other tenants in the residential property, on 15 January 2015 by placing the documents in the tenant's mailbox.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, qualified by the words “not less than”, the last day for the landlord to file and serve additional evidence was 13 January 2014.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the late evidence includes statements by others that, if true, would be highly prejudicial to the tenant. Accordingly, I exclude the late evidence from consideration in this hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Background and Evidence

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

The landlord provided me with a written tenancy agreement. This tenancy began on 1 July 2009. Rent is due on the first of the month. Monthly rent is \$640.00.

The rental unit is part of a multi-unit dwelling. The agent testified that there are eighty other rental units contained on the residential property. The agent testified that, of these eighty units, approximately forty are occupied.

The tenancy agreement is between the tenant and the landlord only. The agent testified that since the commencement of the tenancy, two other occupants now occupy the rental unit: TS and AR. The agent alleges that these occupants are selling illicit narcotics from the rental unit. The agent testified that he believes that the tenant provided the gate access codes to the occupants who then provided the codes to others who visit on the residential property. The agent alleges that these guests are there for the purposes of engaging in illegal drug trade. The agent testified that the tenant's guests play loud music from their cars and yell and scream. The agent testified that he has had to remove the tenant's guests from various unoccupied rental units within the residential property. The agent testified that he has observed illegal drug use by these guests.

The agent testified that the other tenants have told him that they do not feel safe around the tenant, the occupants, or the guests. The agent testified that the other tenants have reported that people (who are believed to be guests of the tenant or the occupants) are peeking in windows, and breaking into rental units.

The agent testified that between twelve and fifteen different tenants have complained about the conduct of the tenant, the occupants and the tenant's guests. The agent testified that three tenants have given the landlord notice to leave should this tenant remain.

The agent provided me with an email exchange between him and an RCMP officer. Most relevant is the following email sent by the RCMP officer:

I created [file number] to document [rental unit] as a suspected drug dealing residence. Indexed to this file is renter: [tenant / date of birth], illegal tenant: [occupant TS / date of birth], and illegal tenant: [occupant AR / date of birth]. I

also observed a female well known to police sleeping on the sofa: [guest MLW / date of birth]. I cannot provide you with the verbatim report, but feel free to advise the Tenancy Branch (sic) to contact me for more information.

The agent declined to call the RCMP officer as a witness.

On 24 December 2014, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or 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;
 - put the landlord's property at significant risk; or
- the 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.

The 1 Month Notice set out that the tenant must move out the rental unit by 25 January 2015.

Analysis

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 provided uncontested and sworn testimony that provide a basis for at least one of the grounds in the 1 Month Notice, that is, the ground established by subparagraph 47(1)(d)(i) of the Act. The tenant, the occupants, and the guests are severely interrupting the lives of the other tenants in the residential property. Furthermore, and pursuant to subsection 47(5), 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 reason for cause set out by the landlord in the 1 Month Notice.

Subsection 47(2) of the Act permits a landlord to set an effective date to end the tenancy, at the earliest, the later of one month after the notice is received and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to subsection 47(2), the earliest effective date for the 1 Month Notice would be 31 January 2015. The landlord has set an effective date in the 1 Month Notice of 25 January 2015. This effective date is too early. Section 53 operates in this case to change the effective date to 31 January 2015. The landlord is entitled to an order of possession for this date.

Conclusion

The landlord is provided with a formal copy of an order of possession effective at one o'clock in the afternoon on 31 January 2015. 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.

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: January 28, 2015

Residential Tenancy Branch

