



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened upon the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47.

On attending the hearing, the landlords made an oral request for an order of possession in the event that I dismissed the tenant's application.

While the respondent/landlord attended this hearing, the tenant did not. The conference continued until 9:47 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m and to hear the landlord's application. Both the landlords (1 male, 1 female) attended the hearing and were given a full opportunity to be heard, to present sworn testimony and to make submissions.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Findings on Non-Appearence of Applicant

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the applicant I order the application of the tenant dismissed without liberty to reapply.

Background and Evidence

At the hearing, the female landlord ("the landlord") testified that she served the tenant with a 1 Month Notice to End Tenancy on November 24, 2014 by handing it to the tenant in person. I find the tenant duly served pursuant to section 88 of the Act.

The landlord testified that this tenancy began November 1, 2014 on a month to month basis. She testified that the tenant resided in the basement suite below herself and her husband. The landlord continues to hold a security deposit in the amount of \$400.00 paid by the tenant on November 1, 2014. The tenant continues to reside in the rental unit. The landlord testified that the tenant recently provided the landlord with \$350.00 and a brief note indicating an intention to vacate the residence on January 15, 2015.

The landlord based their 1 Month Notice to End Tenancy on 2 main grounds;

- The tenant has allowed an unreasonable number of occupants in the unit;
- The tenant or a person allowed on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that it was in error that she also included a ground related to illegal activity on the 1 Month Notice.

The landlord testified that from the first month that the tenant moved in, she was very noisy, often late at night. The landlord testified that, after the tenant had lived in the basement suite for 2 weeks, she spoke to the tenant about the noise and asked that she reduce her noise, particularly late at night. The landlord testified that, several days later, on November 21, 2014, the tenant was so noisy below them at 1:30 a.m. that the landlords called the police. The landlord noted several other dates and occasions occurring regularly when the tenant was loud and disruptive to the landlords above. The landlord also noted several dates where she spoke to the tenant, asking her to decrease the noise from her rental unit, "or we would have to ask her to leave". The landlord testified that the noise level has increased from the tenant's suite and that the tenant is often noisy at unreasonable hours, late into the night.

The landlord made an oral request at this hearing for an Order of Possession should the tenant fail in her application. The landlord testified that she has received verbal notice from the tenant that the tenant will move out of the rental unit on January 15, 2015 but she has not been provided with formal, written notice. The landlord wishes to ensure that the tenancy ends.

Analysis

This was the tenant's application. She has not attended but provided written submissions to dispute the 1 Month Notice to End Tenancy. The landlord referred to the tenant's written submissions and testified providing evidence to support the 1 Month Notice to End Tenancy.

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. In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, there is evidence that the tenant has been loud and disruptive on numerous occasions. As occupants of the residential premises, the landlords provided specific examples of interference and disruption to their right to quiet enjoyment on the premises. The tenant was told of the unreasonable disruption to the landlords on several occasions. She was provided several verbal warnings that her tenancy was in jeopardy. The tenant did not take steps to reduce the noise from her unit. The tenant continued to create noise and disruption and late, unreasonable hours. Accordingly, I find that the tenant continued to unreasonably disturb the landlords, who are occupants of the residential property, as well.

Where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, the following provisions of section 55(1) of the Act requires me to grant the landlord an order for possession. 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.

As the tenant's application is dismissed and the landlord has made an oral request for an order of possession, 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 one o'clock in the afternoon on January 14, 2015, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord has substantiated the 1 Month Notice on the basis of subparagraph 47(1)(d)(i), I need not consider the alternate reason proposed under paragraph 47(1)(c).

Conclusion

I order the application of the tenant dismissed without leave to reapply.

I am granting the landlords an Order of Possession to be effective by one o'clock in the afternoon on January 14, 2015. If the tenant does not vacate the rental unit on that date, 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 08, 2015

Residential Tenancy Branch

