



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC

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; and
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The tenants did not attend this hearing, although I waited until 0946 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by his daughter, who acted as an interpreter at various points during the hearing.

The landlord testified that he personally served the tenants with the dispute resolution package on 4 January 2015. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that he personally served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 12 November 2014. On the basis of this evidence, I am satisfied that the tenants were served with the 1 Month Notice pursuant to section 88 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

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 testified that he did not have any written tenancy agreement with the tenants in respect of this tenancy. This tenancy began on 1 October 2011. Rent is due on the first of the month. Monthly rent was supposed to be \$800.00; however, the landlord testified that the tenants have only ever paid him \$700.00 per month in rent.

The landlord testified that he has never received a security deposit from the tenants for this tenancy. The landlord testified that he asked the tenants for a security deposit at the beginning of the tenancy, but that they never paid it.

The landlord testified that the rental unit is a basement suite. The suite contains two bedrooms, a living room, one bathroom and a kitchen. The landlord estimated that the area of the suite is approximately 700 square feet (65m²).

The landlord testified that at the beginning of the tenancy there were five occupants. The landlord testified that in or about October 2011, the tenant HH told the landlord that the tenant HH's parents had been granted a visa. The landlord testified that at that time, the tenant HH did not tell the landlord that the parents would be moving into the rental unit. The landlord testified that there are currently eight occupants in the rental unit: the tenants, their four children, and the tenant HH's parents.

The landlord testified that the tenants are leaving garbage and belongings in the garage and around the property.

The landlord testified that he has not given the tenants any written notices other than the 1 Month Notice.

On 12 November 2014, the landlord served the tenants 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;

- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The 1 Month Notice set out that the tenants must move out the rental unit by 30 November 2014.

Analysis

Subparagraph 47(1)(c) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has allowed an unreasonable number of occupants in the unit.

The landlord has provided uncontested and sworn testimony that there are currently eight tenants or occupants living in a two-bedroom rental unit. Furthermore, and pursuant to subsection 47(5), the 1 Month Notice states that the tenants 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 tenants 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 December 2014. The landlord has set an effective date in the 1 Month Notice of 30 November 2014. This effective date is too early. Section 53 operates in this case to change the effective date to 31 December 2014. As this date has past, the landlord is entitled for an order of possession effective two days after its service on the tenants.

At the conclusion of the hearing, I asked the landlord if he had any other evidence to present me. He informed me that he did not. The landlord did not provide me with any evidence in respect of the losses he claimed. I dismiss this portion of the landlord's claim without leave to reapply as he has failed to meet his onus to prove his losses.

Conclusion

The landlord is provided with a formal copy of an order of possession. 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.

The landlord's application for compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed without leave to reapply.

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 22, 2015

Residential Tenancy Branch

