



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an "other" remedy or compensation under the *Act* and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 10:02 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's representative ("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.

Issues to be Decided

Is the landlord entitled to an "other" remedy under the *Act*? In this case, an Order of Possession with respect to the rental unit at the end of a fixed term tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This 2 month fixed term tenancy began on December 1, 2014 and was scheduled to end January 31, 2015. Prior to this agreement between the tenant and landlord, the tenant resided on the premises under a six month fixed term tenancy from June 24, 2014 to November 30, 2014. The landlord testified that the rental amount for this tenancy is \$1230.00 payable on the first of each month. The landlord testified that the tenant paid rent on February 1, 2015. She was issued a receipt indicating that the funds were accepted, "for use and occupancy only". The landlord currently holds a security deposit in the amount of \$300.00 and a pet deposit in the amount of \$100.00 paid by the tenant in June 2014.

The landlord served a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenant on December 23, 2014 by posting it on her rental unit door. Attached to the 1 Month Notice was a letter from the corporate landlord stating,

It has come to my attention that you still have 3 pets living in your unit. As we advised you in a letter dated November 28th this is a breach of your tenancy. Therefore, we are advising you that your tenancy will not be extended beyond the end of your present fixed term lease that ends on January 31, 2015.

Given the evidence provided by the landlord and pursuant to section 88 and 90, I find the tenant served with the 1 Month Notice on December 26, 2014, 3 days after its posting. The 1 Month Notice had an effective date of January 31, 2015, the last day of the fixed term tenancy and the notice identified a breach of a material term of the tenancy. The landlord testified that he serviced the Application for Dispute Resolution package, including Notice of the Hearing and the landlord's evidence to the tenant by registered mail on February 12, 2015. He provided tracking numbers and receipts with respect to that mailing. Pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the Application for Dispute Resolution package on February 17, 2015, 5 days after its mailing.

The landlord testified that the building has a pet policy that a tenant may have a maximum of one pet. The landlord testified that, during her first tenancy, it was determined that the tenant had birds, a cat and a dog. The landlord testified that the tenant said she would re-home the pets and the two month fixed term was an opportunity to do so but she still has all of her pets in the rental unit. Given that her fixed term tenancy was scheduled to end, and as a result of this failure to act, the landlords posted a 1 Month Notice and a letter to her door advising the tenant that the tenancy would not be renewed.

The landlord indicated at this hearing that he is seeking an order of possession. The documentary evidence that he submitted and served to the tenant as part of his application includes information in the dispute section stating, "Nature of Dispute: End Tenancy, and seeking an Order of Possession". The landlord also provided in his application, in the notes section that, "the tenancy was a fixed term lease expiring January 31, 2015. [the] tenant has refused to leave."

The landlord submitted and served, according to his testimony, a copy of the current tenancy agreement. That agreement describes the tenancy as a fixed term with no option at the end of the term except that the tenant must move out.

Analysis

Section 57 of the *Act* describes what happens if a tenant does not leave when tenancy has ended. In this section, the landlord must not take actual possession of a rental unit that is occupied by the “over holding tenant” or tenant who has not left unless the landlord has a writ of possession. The landlord sought an Order of Possession to recover possession of the rental unit.

Under section 55(2) of the *Act*, a landlord may request an order of possession of a rental unit at a dispute resolution hearing by;

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

The landlord has applied under the *Residential Tenancy Act* for relief, indicating that while the fixed term tenancy has ended, the tenant has not vacated the rental unit. The landlord stated at this hearing that he intended to seek an order of possession by marking “other” on his application for dispute resolution. He further particularized that he would be seeking to end this tenancy in his application by his written comments in the application stating that the fixed term tenancy had come to an end and the tenant had not moved out.

The landlord has provided undisputed sworn testimony and supporting evidence to show that this tenancy was intended for a fixed term from December 1, 2014 to January 31, 2015. He provided documentary evidence in the form of a letter from the landlord to the tenant advising that the fixed term tenancy would not be renewed.

Out of an abundance of caution, the landlord served and filed a 1 Month Notice to End Tenancy for Cause relying on the breach of a material term of the tenancy, specifically having 2 more pets than the tenancy agreement allows. With respect to the landlord’s supported testimony that the fixed term tenancy has ended and with respect to the issuance of a 1 Month Notice for Cause, the tenant has not attended this hearing to

offer any dispute. The fixed term tenancy has ended. I find that the landlord has sufficiently informed the tenant of this hearing and the nature of this application. The landlord is entitled to an Order of Possession under section 55(2)(c). The tenant is required to vacate the premises.

As the landlord was successful in this application, I find he is entitled to recover the filing fee for this application.

Conclusion

I am granting the landlord 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.

I am granting a monetary award in favour of the landlord against the tenant in the amount of \$50.00. In order to implement this award, the landlord may deduct \$50.00 from the tenant's security deposit. The tenant's security deposit will be reduced from \$300.00 to \$250.00.

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: March 09, 2015

Residential Tenancy Branch

