



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with 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 ("1 Month Notice") pursuant to section 47. While the tenant included in his application a request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, no such notice was issued. That portion of the tenant's formal application was withdrawn.

Both parties attended and were given full opportunity to be heard, to present evidence and to make submissions. A witness testified on behalf of the landlord. At the hearing, the landlord made an oral application for an Order of Possession should the tenant's application fail.

The landlord provided evidence that a 1 Month Notice to End Tenancy for Cause was personally served to the tenant on February 28, 2015. The tenant confirmed receipt of the 1 Month Notice and, in response, filed for dispute resolution. The tenant gave sworn testimony that he personally served the landlord with his Application for Dispute Resolution hearing package on March 13, 2015. The landlord confirmed receipt of this package. I accept that the tenant was duly served with the 1 Month Notice and the landlord was duly served with the tenant's Application for Dispute Resolution hearing package.

Preliminary Matter: Adjournment Request by Tenant

The tenant testified that he received an evidence package from the landlord on April 10, 2015. At this hearing, the tenant applied for an adjournment to provide further evidence in response to the landlord's evidence package.

Rule 6 of the Dispute Resolution Rules of Procedure state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before

noon at least 3 business days before the scheduled date for the dispute resolution hearing". In this case, the tenant provided no notice of an adjournment prior to the hearing to either the landlord or to the Residential Tenancy Branch.

The criteria provided for granting an adjournment, under Rule 6.4 of the Rules of Procedure are;

- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

The tenant testified that he required time to provide materials in response to the landlord's evidentiary package and submissions. He further submitted that, prior to receiving the landlord's evidence package he was not entirely certain why he was issued a notice to end tenancy. In the course of his testimony, the tenant acknowledged receiving and responding to the 1 Month Notice outlining the grounds the landlord relied on to end the tenancy. The tenant acknowledged, in testimony, that he had been approached by other occupants of the residence with respect to a variety of issues with his tenancy. Therefore, based on the materials provided to the tenant, his testimony and the nature of this application, I find that the tenant was aware of the case against him in this matter.

The tenant was not able to identify any evidence he would be able to produce to dispute the landlord's claims. The tenant testified that he *may* be able to produce witnesses who could address whether he was provided a copy of his hydro bill. I note that the payment or non-payment of the tenant's hydro, while included in the landlord's application would not affect the outcome of a hearing concerning an end to his tenancy for unpaid rent or for significant interference with the occupants or landlords of the residential premises. I note that the payment or non-payment of his hydro bill would also not affect the outcome with respect to the claim that the tenant engaged in illegal activity. Based on the tenant's inability to articulate what evidence he may bring if granted an adjournment, I cannot foresee that an adjournment would result in further evidence to address this application.

The tenant also testified that some of the materials submitted by the landlord (containing allegations of disruption from the other occupants of the residential premises) were unfounded or embellished. As stated, I find that the tenant presented no submissions that indicated an adjournment would allow him to provide new or useful evidence in addressing this application. I note that the tenant was aware of the allegations against him generally as a result of the 1 Month Notice to End Tenancy and was at liberty to produce any material to respond to the notice and the grounds identified in that notice.

It is integral to the dispute resolution process to ensure that both parties have a fair opportunity to be heard, both providing evidence and making submissions in a prepared and considered way. I find the tenant has had a full opportunity to prepare his evidence and submissions in that he applied for dispute resolution over one month prior to this hearing date. I find that the tenant received evidentiary materials from the landlord on April 10, 2015 that further illustrated the grounds previously identified on the Notice to End Tenancy. Those materials were provided by the landlord to the tenant seven days prior to this hearing. I find the tenant had sufficient opportunity to prepare rebuttal evidence in response to the landlord's materials prior to the hearing, if he intended to do so.

I find that the tenant must rely on his sworn testimony to dispute the allegations and that he failed to disclose any material or witness that would impact the hearing of this dispute and that were unavailable to him prior to this hearing. I also note that the landlord, in an application to cancel a notice to end tenancy, has the burden to prove that the grounds on the Notice to End Tenancy are valid and justified. Therefore, I dismiss the tenant's application for an adjournment of this hearing. I find that the tenant is not prejudiced by proceeding with the hearing of his application on the originally scheduled date.

Issues to be Decided

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

Background and Evidence

Both parties testified that this tenancy began on June 27, 2013 with a monthly rental amount of \$500.00 payable directly to the landlord on the first of each month. The landlord testified that he continued to hold a \$250.00 security deposit that the tenant paid on at the start of this tenancy.

A copy of a 1 Month Notice to End Tenancy for Cause was submitted by the landlord. In that Notice, with an effective date of March 31, 2015, the landlord cited the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

Tenant or a 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; ...*

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 landlord testified that the tenant repeatedly paid rent late. He testified that the tenant had been late in paying rent more than 5 times in the last two years. The landlord issued a 1 Month Notice on February 28, 2015. The tenant applied on March 10, 2015, within the 10 day timeline to cancel the notice to end tenancy. The tenant also testified that he paid rent late, particularly during the past several months. The tenant indicated he has often been more than one week late in paying rent. He testified that he has been as much as three weeks late in paying rent. He testified that he recently made payment arrangements with respect to outstanding rental amounts and that he had agreed to create a direct deposit to provide the landlord with the monthly rent.

The landlord's 1 Month Notice relied on 3 other grounds for Cause to end tenancy. The notice indicates that the tenant or a 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; and that 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 landlord presented evidence, including written complaints and written statements by the other occupants of the residential premises.

One of the occupants of the residential premises testified that all of the occupants in the residential premises have had ongoing difficulties about this particular tenant. She provided sworn testimony that there have been people coming and going from the tenant's residence at a variety of hours of the day and night, causing noise by running cars and speaking loudly. She testified with respect to one occasion where a disoriented person was collapsed on the tenant's stoop. She testified that, often, she and the other occupants are exposed to strong odours including smoke. She testified that some residents have been approached by the tenants' guests with respect to illegal activities. She testified that the neighbours have had disputes with respect to the care of the communal garden/yard leading to aggressive arguments. Finally, she testified that she and other occupants have found drug paraphernalia on the common grounds between the rental units. This witness testified that she often feels unsafe on her own property and doesn't take her dog out at night as a result of the activities of the tenant and his guests.

The tenant generally denied the claims made by the landlord and his witness. He testified that he had friends, guests to his residence from a variety of backgrounds but that he did not judge them. He acknowledged the incident where a person was found on his stoop and explained the circumstances of that incident. He acknowledged having arguments with the other occupants of the premises with respect to the garden but denied any involvement with drugs, providing alternate explanations for his neighbour's assumptions.

Analysis

One of the grounds on which the landlord relies in his 1 Month Notice is that the tenant is repeatedly late paying rent. The landlord provided testimony with respect to this repeated late payment. The tenant confirmed that, particularly recently, he had been regularly late paying rent. Both parties agreed that a payment arrangement had been made to address outstanding rental amounts and that the tenant would undertake to create a direct deposit of rent each month to the landlord. The tenant testified that the direct deposit to the landlord had not yet been created. The landlord testified that the tenant has failed to strictly meet and maintain the payment obligations of their agreement.

Residential Tenancy Policy Guideline No. 38 addresses late payment of rent. It states;

- that a landlord may end a tenancy where the tenant is repeatedly late
- three late payments are the minimum number to justify a notice to end tenancy

- it does not matter if late payments are consecutive or if other recent payments have been made on time
- whether the landlord is inconvenienced or suffered damage as a result of late payments is not a relevant factor in considering end to tenancy for late payment of rent

There is no dispute that the tenant has been late in rent more than three times. The tenant testified that he has been one to three weeks late in paying rent on several occasions.

Section 47(1)(b) that provides a landlord may end tenancy when the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline outlining the nature of repeatedly late rent provides clear directions in finding repeated late payment of rent to end a tenancy. Based on all of the evidence provided, I find that the tenant has repeatedly paid rent late on more than three occasions in a period of time that justifies the end of tenancy. Based on this finding of repeated late payment of rent, I find the landlord's notice to end tenancy valid. The tenancy is ended as of the effective date of the 1 Month Notice, March 31, 2015.

I do not need to consider the landlord's reliance on the grounds under section 47(d)(i), 47d(ii) & 47(e)(ii) given that I have found that the tenant has been repeatedly late paying rent and that therefore the notice to end tenancy is valid. However, I note that the landlord provided compelling evidence, including witness testimony with respect to unreasonable disturbance of other occupants and jeopardy to the safety of the other occupants given the drug paraphernalia found on the premises and other evidence provided to support these grounds.

Based on all of the evidence at the hearing, including the disclosure of the tenant with respect to non-payment of rent, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. I therefore dismiss the tenant's application to cancel the 1 Month Notice with the effect that this tenancy ended March 31, 2015. At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. I find that the landlord is entitled to a 2 day Order of Possession.

Conclusion

The tenant withdrew his application to cancel a notice to end tenancy for unpaid rent.

I dismiss the tenant's application to cancel a notice to end tenancy for cause dated February 28, 2015.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 17, 2015

Residential Tenancy Branch

