



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT EMERGENCY AID SOCIETY
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 attended with his advocate. The landlord attended and was represented by its three agents. The agents are all employees of the landlord.

The agent ML testified that he personally served the tenant with the dispute resolution package on 24 March 2015. The tenant did not dispute service. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The agent ML testified that he personally served the tenant with the landlord's evidence on 15 April 2015. The tenant did not dispute service. On the basis of this evidence, I am satisfied that the tenant was served with the landlord's evidence pursuant to section 88 of the Act.

The agent ML testified that he served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 10 March 2015 by posting the notice to the tenant's door. The tenant acknowledged that he received this notice on 15 March 2015. 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.

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 agents and tenant, 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 tenant and landlord entered into a written tenancy agreement on 1 August 2013. This tenancy began on or about 6 August 2013. Monthly rent of \$375.00 is due on the first.

On 10 March 2015, the landlord issued the 1 Month Notice to the tenant. The 1 Month Notice set out an effective date of 30 April 2015. The 1 Month Notice set out that it was given for four reasons:

- 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 landlord provided me with six photographs of the rental unit taken April 2015. Those photographs show that the rental unit is filled with clutter. The agent DG submits that the amount of clutter in the rental unit represents a fire hazard and has the potential to attract rodents. The agent DG submits that the level of clutter is such that it seriously jeopardized the health safety of lawful right of another occupant or the landlord or, in the alternative, puts the landlord's property at significant risk.

The tenant has not applied to cancel the 1 Month Notice. The tenant testified that he was unable to make an application because he required proof of income assistance for a fee waiver in order to file. The tenant testified that, on 24 March 2015, he was arrested. The tenant submitted that as a result of his arrest he was unable to file to cancel the 1 Month Notice.

Analysis

Subject to the presumption in subsection 47(5) of the Act, 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.

Subparagraph 47(1)(d)(ii) 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 seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The landlord has set out in his 1 Month Notice, among other reasons, that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Pursuant to subsection 47(4) a tenant must dispute a notice given pursuant to section 47 within ten days from its receipt. In accordance with subsection 47(5), where a tenant fails to apply for dispute resolution within the ten-day period, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenant received the 1 Month Notice on 15 March 2015. This means that the tenant had until 25 March 2015 to apply to this Branch to cancel the 1 Month Notice. The tenant testified to reasons why he was unable to file and asked that I extend the time for him to file.

Pursuant to subsection 66(3) an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice. The effective date of the 1 Month Notice was 30 April 2015. Thus, the tenant would be unable to take any action at this point that would defeat the conclusive presumption.

There is nothing within my jurisdiction that allows me to grant the tenant any relief.

The landlord has provided arguable evidence to show that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. As the 1 Month Notice is not a nullity, I am bound by the conclusive presumption set out in subsection 47(5) of the Act. As such, the tenant is presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice, 30 April 2015.

For the reasons outlined above, I find that the landlord is entitled to an order of possession effective two days from service on the tenant.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant 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: May 06, 2015

Residential Tenancy Branch

