



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Victoria Cool Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNC, OPT
the landlord: OPB, FF

For

Introduction

This hearing was convened as a result of the applications of the parties for dispute resolution under the Residential Tenancy Act ("Act").

The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause ("Notice") and an order of possession for the rental unit.

The landlord applied for an order of possession due to an alleged breach by the tenant of an agreement with the landlord and for recovery of the filing fee paid for this application.

Both the tenant and the landlord's agent (hereafter "landlord") attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the participants were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the other's application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

Section 2.12 of the Rules allows the original respondent, the landlord in this case, to file an application for dispute resolution in response to a related application, and it is termed a cross application. In this case, the tenant filed her application for dispute resolution on June 22, 2015, seeking cancellation of the landlord's Notice.

On June 25, 2015, the landlord filed their application seeking an order of possession for the rental unit based upon a term in the written tenancy agreement requiring the tenant to vacate at the end of the fixed term, but did not seek an order of possession for the rental unit based upon their Notice.

While I do not find the landlord's application to be sufficiently related to the primary issue listed in the tenant's application, and that is whether this tenancy would continue based upon their Notice, I nonetheless determined that the underlying issue is whether this tenancy would continue or not. I therefore made the decision to proceed in considering both parties' applications at this hearing, due to administrative and procedural fair play.

Preliminary matter#2-

Although the tenant requested an order of possession for the rental unit, at the hearing, both parties confirmed that the tenant has not vacated the rental unit. I have therefore amended the tenant's application and excluded her request seeking such an order.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the landlord's Notice?
2. Is the landlord entitled to an order of possession for the rental unit and to recovery of the filing fee paid for this application?

Background and Evidence

I heard evidence that the tenant originally moved into the rental unit on March 1, 2015, and on May 29, 2015, the parties signed a written tenancy agreement for a 1 month, fixed term tenancy, which required the tenant to vacate at the end of the fixed term, or June 30, 2015 in this case. The written tenancy agreement was submitted by both parties.

The landlord submitted, with confirmation by the tenant, that the tenant has not yet vacated the rental unit.

The tenant submitted that she signed the tenancy agreement under duress; however, the landlord submitted that the tenant signed the tenancy agreement freely, with the full understanding that the tenant was required to vacate at the end of the fixed term.

The landlord submitted further that the tenant did pay rent for July, but that she was given a receipt showing the acceptance of the rent was on a use and occupancy only basis.

With regard to the landlord's Notice, the landlord said that the tenants were served the Notice on March 31, 2015, by personal service. The tenant confirmed receipt of the Notice that date.

The Notice explains that the tenant had 10 days of receipt to file an application for dispute resolution in dispute of the Notice, or in this case, by April 10, 2015. It also explains that if the tenant did not file an application to dispute the Notice within 10 days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The effective move out date listed on the Notice was April 30, 2015.

The tenant filed an application to dispute the Notice on June 22, 2015.

Analysis

Landlord's application-

Section 44 of the Act states the ways a tenancy ends, with subsection (1)(b) providing that one way a tenancy ends is when the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. Section 55 (2)(b) of the Act states that a landlord is entitled to an order of possession for the rental unit under these circumstances.

In the case before me, I find the landlord submitted sufficient evidence that the parties agreed by way of the written tenancy agreement that the tenancy would end at the conclusion of the fixed term, in this case, June 30, 2015, and therefore the landlord is entitled to request and receive an order of possession for the rental unit.

I therefore grant the landlord an order of possession for the rental unit effective 2 days after service upon the tenant and it is enclosed with the landlord's Decision.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after service upon the tenant, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

I also grant the landlord recovery of their filing fee paid for this application, or \$50.00. I grant the landlord a monetary order in the amount of \$50.00

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

In the alternative, the landlord is permitted to deduct \$50.00 from the tenant's security deposit in satisfaction of their monetary award.

Tenant's application-

As I have granted the landlord's application for dispute resolution and granted them an order of possession for the rental unit and due to the tenant's failure to dispute the Notice by April 10, 2015, I dismiss the tenant's application seeking cancellation of the Notice, without leave to reapply.

Conclusion

The landlord's application for an order of possession for the rental unit is granted.

The tenant's application seeking cancellation of the landlord's Notice is dismissed.

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: July 24, 2015

Residential Tenancy Branch

