



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

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
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord testified that he served the tenant with the 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") in person on July 2, 2015. The tenant confirmed receipt of the 1 Month Notice and the landlord's Application for Dispute Resolution package ("ADR"). I accept the tenant was sufficiently served with both the 1 Month Notice and the landlord's ADR.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on December 15, 2013 as an 8 month fixed term agreement. It continued on a month to month basis with a rental amount of \$750.00 payable on the first of each month. The landlord testified that he continues to hold the \$375.00 security deposit and the \$375.00 pet damage deposit paid by the tenant on December 6, 2013.

The landlord has applied for an Order of Possession for cause and cited the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord issued a 1 Month Notice on July 2, 2015 with an effective date of July 15, 2015. The tenant did not apply to dispute the 1 Month Notice. The landlord testified that the tenant paid rent late repeatedly over the course of the tenancy. Specifically, the landlord testified that the tenant had paid rent late several months during 2014. The landlord testified that, in 2015, the tenant paid rent late as follows;

- January 5, 2015;
- February 4, 2015;
- March 6, 2015; and
- April 9, 2015.

The landlord testified that he contacted the tenant by phone on several occasions during 2014 and in January and February 2015 with regards to late payment of rent. The landlord also provided warning letters and written requests for on-time payment of rent including letters dated April 25, 2015 and May 6, 2015.

The landlord confirmed the tenant's testimony that the tenant paid her rent on time on May and June 2015. He testified that she did not pay rent in July until July 10, 2015. The landlord testified, providing documentary evidence in support, that the tenant was issued a receipt for her July rent payment for "use and occupancy only", suggesting that he did not intend to reinstate the tenancy by receiving payment. Both parties agreed that the tenant paid rent in full and on time in August and September 2015. The landlord issued no receipts and made no comment to the tenant with respect to these rent payments.

The tenant testified that she paid her rent by placing the rent amount in her mailbox. She testified that the landlord, who resided upstairs from the rental unit, would retrieve it each month. She acknowledged that her rent had been paid late in April 2015 and July 2015. She testified that she had not received previous notices with respect to the late

payment of rent. She claimed that any letters or notices for late or unpaid rent were created by the landlord after this matter was set for dispute in an attempt to bolster his case against her. She testified that the landlord agreed to accept late rent in March and she testified that she paid her rent on time in May and June 2015.

The tenant testified that the landlord began to take action with respect to the late payment of rent after she filed for dispute with the Residential Tenancy Branch with respect to another issue related to this tenancy.

The landlord testified that, beyond the late payment of rent, the tenant had engaged in illegal activity that damaged the property, adversely affected another occupant or the landlord or jeopardized a lawful right of another occupant. However, the landlord provided no evidence, in testimony or documentary submissions to support this ground to end tenancy for cause.

As well, the landlord submitted that the tenant has breached a material term of the tenancy agreement by having more than one dog in the residence and not getting her dog spayed as required by the residential tenancy agreement. The landlord submitted a copy of this agreement. The agreement included, written in the margin, a term stating, “[the tenant] will spay her pet”.

The tenant testified that the requirement to spay her pet dog was not part of the original tenancy agreement between the landlord and the tenant. She testified that she had told the landlord she was considering spaying her dog but that she did not agree to do so as a part of the tenancy. She also submitted that spaying a dog is not generally a term that is related to the tenancy and should not be considered a *material* term of the tenancy. The landlord responded that he believed, for a variety of reasons provided it was in the best interest of the dog to be spayed.

The landlord sought an Order of Possession for this rental unit and also sought to recover his filing fee for this application.

Analysis

With respect to the landlord’s claim that the tenant has engaged in illegal activity, I find that the landlord has presented no evidence to support that claim. I find that the landlord is not entitled to an Order of Possession based on this ground.

With respect to the allegation that the tenant has breached a material term of the residential tenancy agreement, I refer to Residential Tenancy Policy Guideline No. 8 where “material term” is defined,

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Considerations with respect to a material term are clearly stated within the *Act* itself,

47(1)(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord submitted that he included a term in the tenancy agreement that the tenant spay her dog as this was an important term to him. He also submitted that the term was placed in the agreement because of its general significance, as agreed by both parties in discussions prior to the signing of the agreement. The tenant disputes that this was a term of the tenancy agreement at all. She testified that the landlord placed this term inside the agreement after the agreement had been signed by both parties. I note this additional term of the tenancy agreement is written in the margins and does not appear to be initialed or otherwise acknowledged in writing by the tenant.

There are three other additional provisions provided in this particular portion of the residential tenancy agreement. They are;

- No smoking on/in rental unit
- No use of yard for pet for bathroom use
- [The tenant] will provide large carpet for bedroom

While the residential tenancy agreement completed by the landlord allows for an addendum to the agreement, the landlord did not write an addendum to include these points.

The tenancy agreement submitted by the landlord includes the term that the tenant will spay her pet dog. However, the overall scheme of the agreement between the parties is intended to outline the integral terms of a residential tenancy. While this tenancy agreement permitted the housing of a pet dog and the payment of a pet damage deposit for this pet dog, certain conditions relating to that dog may or may not have been intended to be material to the residential tenancy agreement.

When a landlord claims that a tenant has breached a material term of the residential tenancy agreement, the burden falls to the landlord to show that the term is material to the tenancy and tenancy agreement. The Policy Guideline No. 8 suggests that,

...the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. ...

And

...the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material...

A landlord may end a tenancy for breach of a material term but the standard of proof is high. While the landlord provided strong arguments for the benefits of spaying one's dog, he did not present sufficient evidence or argument to support his position that the tenant's dog being spayed was a material term of this tenancy. As submitted by the tenant, whether the dog has been spayed does not affect the property or any other aspect of the tenancy.

With respect to the repeatedly late payment of rent, I note the following facts;

- The tenant acknowledges late payment of rent in April 2015 and July 2015;
- The landlord provided a copy of a letter indicating that he accepted payment of rent on July 10, 2015 (late) for "use and occupancy only";
- Both parties agree that the rent was paid in full and on time in August and September 2015.

Residential Tenancy Policy Guideline No. 38 provides that a landlord may end a tenancy where rent is repeated late. The guideline provides that three late payments of rent are the minimum number of late rent payments to justify a notice to end tenancy.

The landlord submitted supporting documentary evidence, in the form of warning letters and previous 10 Day Notices issued for unpaid rent as well as bank account activity to support his testimony that the tenant also paid rent late on January 5, 2015; February 4, 2015; and March 6, 2015.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice for repeated late payment of rent and to therefore obtain an end to this tenancy for cause. The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of his tenancy on the effective date of the notice. In this case,

this required the tenant to vacate the premises by July 15, 2015. As that has not occurred, I find that the landlord is entitled to an Order of Possession. Both parties agree that the tenant has paid rent until September 30, 2015. I issue an Order of Possession dated September 30, 2015.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application from the tenant. The landlord indicated that he continues to hold a security deposit in the amount of \$375.00 and a pet damage deposit in the amount of \$375.00 for a total of \$750.00. Therefore, pursuant to section 72(2) of the Act, I allow the landlord to retain \$50.00 from the tenant's security deposit to recover the cost of the filing fee.

Conclusion

I grant the landlord an Order of Possession dated September 30, 2015. If the tenant does not vacate the rental unit by that date, the landlord may enforce this Order in the Supreme Court of British Columbia.

I order the landlord to deduct \$50.00 from the tenant's security deposit leaving a remainder of \$375.00 in pet damage deposit and \$325.00 in security deposit at the end of this tenancy and before condition inspection at move-out.

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: September 23, 2015

Residential Tenancy Branch

