



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, O & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant by posting on August 11, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was sufficiently served on the Landlord by mailing, by registered mail to where the Landlord carries on business on August 24, 2015. I find the Application for Dispute resolution filed by the Landlord was sufficiently served on the Tenant by posting on September 11, 2015. The tenant has acknowledged receipt of the landlord's Application for Dispute Resolution. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?
- c. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy August 11, 2015?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant and SM entered into a 3 month fixed term tenancy agreement in writing dated July 9, 2015 that provided that the tenancy would commence on July 15, 2015 end on October 15, 2015 and "At the end of this fixed length of time ...the tenancy ends and the tenant must move out of the residential unit..."

The tenancy agreement also included a clause as follows:

"2) Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable."

The tenant represented that the building manager who signed the agreement represented to her when she expressed concerns about this clause that it was to provide a period of probation and if everything worked out she could continue on a month to month basis. The building manager did not attend to hearing. However, the representative of the landlord submits should not be accepted as it contradicts the written tenancy agreement.

On August 11, 2015 the landlord served a one month Notice to End Tenancy on the Tenant. The grounds set out in the Notice to End Tenancy are as follows:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

The landlord WR Ltd. served a Notice on all tenants in the rental property that the tenancy agreement had been transferred to them and the tenant should pay all rents to them.

The tenant disputes the one month Notice to End Tenancy stating that all of the things that have been attributed to her do not apply.

The tenant has failed to pay the rent for October. She stated the landlord failed to attend to pick up the rent even though she has telephoned on numerous occasions.

Analysis - Order of Possession:

After carefully considering all of the disputed evidence I determined the landlord is entitled to an Order for Possession for the following reasons:

- The tenancy agreement is a fixed term tenancy agreement that provides that the tenancy must end on October 15, 2015 and that the tenancy agreement comes to an end and the tenant must vacate the rental unit at that time. The tenant initialed that provision.
- The second provision in the tenancy agreement provides that any change or addition to this tenancy agreement must be agreed to in writing and initialed by both parties. If a change is not initialed by both the landlord and the tenant ...it is not enforceable.
- The parties are expected to read their written agreement and are bound by them.
- The use of fixed term tenancy agreement is contemplated in the present Residential Tenancy Act and it is not an unconscionable term.
- According to the terms of the written agreement, even if the representative of the landlord told her it was a probationary period, would not be enforceable.

As a result I determined the tenancy is to come to an end on October 15, 2015 in accordance with the terms of the fixed term tenancy agreement. Accordingly, I granted the landlord an Order for Possession on 2 days notice. As the landlord has been successful I ordered the

tenant pay to the landlord the cost of the landlord's filing fee in the sum of \$50 such sum shall be deducted from the security deposit.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Tenant's Application:

Given my conclusion above it is not necessary to consider the tenant's application on its merits as the tenancy has come to an end. Accordingly the tenant's application is dismissed without leave to re-apply.

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: October 15, 2015

Residential Tenancy Branch

