



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, FF, OPR, OPC, MND, MNR, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord applied for:

- an order of possession for non-payment of rent and/or an order of possession issued for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenant's notice of hearing package. The tenant confirmed receipt of the landlord's notice of hearing package. On the basis of this evidence, I am satisfied that both parties were duly served with the dispute resolution package pursuant to sections 89 of the Act. The landlord confirmed receipt of the tenant's submitted documentary evidence. The tenant confirmed receipt of the landlord's submitted documentary evidence. On the basis of this evidence, I am satisfied that both the landlord and the tenant were served with the evidence pursuant to section 88 of the Act.

During the hearing both parties clarified that the 10 Day Notice dated July 18, 2015 was cancelled by the landlord as the \$3,000.00 rent was paid in full on July 20, 2015. As such, no further action is required for the 10 Day Notice dated July 18, 2015 and the application regarding that Notice is withdrawn. The 10 Day Notice before me is one issued on July 21, 2015.

It was also clarified with both parties that the landlord's monetary claim is limited to the \$4,999.00 amount filed as opposed to the monetary worksheet total of \$10,342.50.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice of July 21, 2015?

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to an order for the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to an order to recover his filing fee?

Is the landlord entitled to an order of possession for unpaid rent based on the 10 Day Notice of July 21, 2015?

Is the landlord entitled to an order of possession issued for cause?

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of her filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of both parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around it are set out below.

This tenancy began on March 31, 2015 on a fixed term tenancy ending on March 31, 2016 as shown by the submitted copy of the signed tenancy agreement. Both parties confirmed that this was a renewal of a "many year lease" between the parties. The monthly rent is \$3,000.00 payable on the 1st day of each month and a security deposit of \$1,500.00 was paid in a prior tenancy agreement in May of 2010. This tenancy allows for a maximum of 5 person(s) living in the house.

The tenant seeks an order cancelling the 10 Day Notice dated July 21, 2015. The landlord seeks an order of possession and a monetary order for \$300.00 in unpaid rent based upon the 10 Day Notice dated July 21, 2015.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated July 21, 2015. The notice stated that the tenant failed to pay rent of \$900.00 that was due on July 1, 2015 and that there was an effective end of tenancy date displayed of July 31, 2015. The landlord clarified that she believed that there were 3 additional occupants and that the tenant should pay an additional \$300.00 per person as per the signed tenancy agreement.

Both parties confirmed that the tenant paid \$600.00 of the \$900.00. The tenant admitted that there were two additional occupants. The tenant disputed that the 3rd person was not an additional occupant, but was an overnight guest. The landlord stated that she attended the rental premises to find unknown people sleeping in the house. The tenant disputed the landlord's testimony, stating that most of the people were just overnight guests and not occupants. The landlord stated, "I don't know" who is and is not a guest.

Both parties confirmed that the landlord served the tenant with the 1 Month Notice dated August 31, 2015. The 1 Month Notice set out that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- 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 quite enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord stated that the tenant failed to disclose that additional people were occupying the rental premises beyond the allowed number of 5. The landlord stated that there was constant moving in and out of co-tenants, visitors and couch surfers on a daily, weekly and monthly basis. The landlord stated that co-tenants did not feel safe and were inconvenienced by these "constant guests". The co-tenants do not feel safe due to the front and back doors never being locked. The landlord also alleges that there is a drug dealer living in the house and letting their customers walk in the open doors.

The landlord has submitted copies of emails from S.R. who is a former roommate of the tenant. In one email, S.R. stated,

As of Sept 1/2015 will have lived here 1 year not a long time but long enough to see how the house operates. My main concern has always been the number of people that come and go. When I first moved in there were 8 people living 'full' time in your house. (I thought this was the norm.) With 8 people and assuming that each one have only one friend, now we are at 16 people.

Just wanted to mention a couple of other items: one being with so many people coming and going, would it be possible to place a lock on my door as I have client files and notes that are of course confidential. With my email being hacked and F. selling drugs out of the house, I'm not sure who to trust.

The landlord stated that with this email, she believes that the tenant has upwards of 16 people in the rental premises, out of which 9 people are living there, with 3 visitors at a time and 4 couch surfers. The landlord stated that there are only 5 bedrooms.

The landlord also stated that the bathroom shower has mold in it and that the tenant was asked to have it cleaned up. The landlord stated that the tenant has failed to maintain the rental property by keeping it clean and free of mold.

The tenant disputed the landlord's claims stating that S.R. is a disgruntled former roommate and is spreading lies about him. The tenant stated that he does have couch surfers and guests, but that none stay longer than a few days. The tenant also disputes that F. is selling drugs at the premises and pointed out that S.R. does not like F. The tenant disputed the landlord's claim that the bathroom is dirty, but he is not aware of any mold in the shower.

The landlord seeks a monetary claim of \$4,999.00 which consists of:

\$8,100.00 for 8 additional people living in the rental premises

\$1,942.50 for mold clean up costs

\$300.00 for unpaid rent for 1 additional occupant.

As clarified during the hearing, the landlord is limiting her claim to \$4,999.00 as per the application filed.

The landlord clarified that the \$1,942.50 claim for mold clean-up is based upon an emailed estimate for a cost not yet realized. The landlord confirmed that no clean-up has been made and that no costs were paid for this portion of the claim.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find that the landlord has failed to meet her burden of proof to show that the tenant owed rent as per the 10 Day Notice dated July 21, 2015. I reached this conclusion based on the conflicting evidence of the parties and that the landlord has failed to show that there was outstanding rent owed for an additional occupant. Although the tenant conceded that 2 out of the 3 persons were indeed additional occupants, the tenant has disputed the 3rd. The landlord provided no supporting evidence that there was a 3rd occupant and even stated "I don't know" who is and is not a guest." The 10 Day Notice dated July 21, 2015 is set aside and is of no

force and effect. This portion of the tenant's application is granted. The landlord's request for an order of possession based upon the 10 Day Notice dated July 21, 2015 is dismissed.

In an application to cancel 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.

The landlord has provided multiple reasons for cause as listed in the 1 Month Notice dated August 31, 2015 and relies upon the emails of S.R. a former roommate of the tenant. The tenant has disputed these claims. The landlord has not provided any other supporting evidence to conclusively show that there were additional occupants. Based upon this information, I find that the landlord has failed to provide sufficient evidence to satisfy me that there were additional occupants in the rental premises that would constitute an unreasonable number of occupants in the unit/site.

The landlord has also selected other reasons for cause that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The landlord has also indicated that, F. has engaged in illegal activity by selling drugs on the rental premises. While I have weighed the evidence of both parties in this regard, I find that the landlord has failed to provide sufficient evidence to satisfy me. The landlord relies solely on submissions of email statements which are disputed by the tenant. On these reasons for cause, I find that the landlord has failed. These portions of the landlord's application to end this tenancy for cause are dismissed. The 1 Month Notice dated August 31, 2015 is set aside and is of no force and effect. The tenant's application to cancel the 1 Month Notice dated August 31, 2015 is granted.

As for the monetary claim of \$4,999.00 claim by the landlord, I find that the landlord has failed to establish the claims of \$300.00 in unpaid rent for an additional occupant and the \$8,100.00 for having 3 additional occupants for 8 months. The tenant has disputed these claims and the landlord has failed to provide sufficient evidence that that there were additional occupants for this period of time. These portions of the landlord's monetary claim are dismissed.

The landlord's claim of \$1,942.50 is dismissed as this is a cost not yet realized as shown by the landlord's own direct testimony. The landlord failed to provide sufficient evidence of any mold caused by the tenant nor has the landlord provided any evidence of having incurred this expense. The landlord confirmed in her direct evidence that this was an estimate and that no work was done.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The tenant's application to cancel the 10 Day Notice dated July 21, 2015 is granted.

The landlord's 10 Day Notice dated July 21, 2015 is set aside and is of no force and effect.

The tenant's application to cancel the 1 Month Notice dated August 31, 2015 is granted.
The landlord's 1 Month Notice dated June 29, 2015 is set aside and is of no force and effect.
The tenancy continues. The landlord's application is dismissed.

The landlord's monetary claim is dismissed.

The tenant is granted a monetary order of \$50.00 for recovery of the filing fee, which may be satisfied by deducting this amount one-time from a future monthly rental payment.

The tenant is provided with a formal Order in the above terms. Should the landlord fail to comply with this Order, this Order may be filed and enforced as Order of the Court in the Province 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: October 14, 2015

Residential Tenancy Branch

