



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAAM CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated July 28, 2015 ("1 Month Notice"), pursuant to section 47; and
- an order to allow access to or from the rental unit for the tenant or the tenant's guests, pursuant to section 70.

The respondent landlord RM ("landlord") appeared at the date and time set for the hearing of this matter. The landlord confirmed that he is the president of the landlord company named in this application and that he had authority to speak on its behalf as an agent at this hearing. The applicant tenant did not appear at this hearing, although I waited until 9:45 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord testified that he received the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application.

The landlord testified that he served the tenant with the landlord's 1 Month Notice on July 28, 2015, by placing a copy under the tenant's door. The notice indicates an effective vacancy date of August 31, 2015. The tenant filed this application on August 5, 2015 to cancel the 1 Month Notice. Although the tenant was not served with the 1 Month Notice in accordance with section 88 of the *Act*, I find that she was sufficiently served for the purposes of this *Act* as per section 71(2)(c) of the *Act*, as I find that she received the notice, since she applied to dispute the notice and attached a copy of the notice with her Application.

At the hearing, the landlord verbally requested an Order of Possession if the tenant's application for cancellation of the 1 Month Notice was dismissed.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Background

The landlord testified that this tenancy began on June 1, 2007 for a fixed term of one year, after which it transitioned to a month-to-month tenancy. Monthly rent in the amount of \$915.00 is currently payable on the first day of each month. A security deposit of \$437.50 was paid by the tenant and the landlords continue to retain this deposit. The landlord testified that the tenant continues to reside in the rental unit. A written tenancy agreement was provided for this hearing. The landlord stated that the tenant has paid rent in full for October 2015.

The landlord's 1 Month Notice was issued for the following reasons:

Tenant or a 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.*

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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord stated that the tenant's son, who lives with the tenant at the rental unit, physically assaulted the landlord's brother, who is the co-owner of the rental unit building. The landlord confirmed that the tenant's son was arrested, spent time in jail and was released with conditions including staying 500 feet away from the landlord's brother. The landlord stated that despite deactivating the tenant's son's FOB for the rental building, the tenant continues to allow her son to live there. The landlord stated that this is a dangerous situation for his brother, who is also a landlord. The landlord

testified that he has asked the tenant to have her son move out from the rental unit but she has not complied.

Analysis

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
(a) the landlord makes an oral request for an order of possession, and
(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the landlord's undisputed testimony at this hearing, I am satisfied that the landlord issued the 1 Month Notice for valid reasons. I find that the tenant's occupant son significantly interfered, unreasonably disturbed, and seriously jeopardized the health, safety and lawful right of one of the landlords of this property, the landlord's brother. I find that the landlord's 1 Month Notice is valid.

Therefore, in the absence of any submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Based on my decision to dismiss the tenant's Application, I find that this tenancy ended on the effective date of the 1 Month Notice, August 31, 2015. At the hearing, the landlord requested an order of possession effective on December 1, 2015, in order to allow the tenant additional time to vacate the rental unit. Accordingly, I find that the landlords are entitled to an Order of Possession, effective at 1:00 p.m. on December 1, 2015.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective at 1:00 p.m. on December 1, 2015. Should the tenant or any other occupants on the premises 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 14, 2015

Residential Tenancy Branch

