



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRAPPA INVESTMENTS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

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

- an Order of Possession for cause, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 35 minutes. The landlord's agent, BF ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's notice of hearing and application for dispute resolution ("Application") on December 17, 2015, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a copy of a Canada Post receipt and tracking number with its Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on December 22, 2015, five days after its registered mailing.

The landlord stated that the tenant was served with a written evidence package, including photographs and letters, on January 15, 2016, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence on January 20, 2015, five days after its registered mailing. However, I advised the landlord during the hearing that I would not be considering the landlord's written evidence at this hearing or in my decision, because it was deemed received less than 14 days prior to this hearing, contrary to Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*.

The landlord testified that the tenant was personally served with the landlord's 1 Month Notice to End Tenancy for Cause, dated November 3, 2016 (which the landlord corrected to 2015) ("1 Month Notice") on the same date. The landlord stated that he also served the 1 Month Notice on November 3, 2015, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with section 88 of the Act, I find that the tenant was personally served with the landlord's 1 Month Notice on November 3, 2015.

Issues to be Decided

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

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2014. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$300.00 and a pet damage deposit of \$100.00 were paid by the tenant and the landlord continues to retain both deposits. The landlord testified that the tenant continues to reside in the rental unit, as he saw the tenant in the unit on the morning of this hearing date. The landlord stated that the rental unit is a room in a fifteen-room old motel building.

The landlord's 1 Month Notice indicates an effective move-out date of December 10, 2015. The landlord issued the notice for the following reason:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed 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;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;*
- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The landlord stated that the tenant is a junk collector and leaves his building supplies and garbage all over the sidewalk and the parking lot of the property, obstructing the

use of these areas by other tenants, occupants and visitors of the property. The landlord confirmed that he has tried to remove these items himself and has notified the tenant to remove these items on October 23, 2015 and November 3, 2015, by way of letters to the tenant. The landlord explained that the areas are now cleaned but the tenant constantly piles items and fails to remove them.

The landlord maintained that the tenant has sublet the rental unit to another occupant without the landlord's written permission. He stated that this other occupant is residing in the second bedroom of the two-bedroom room.

The landlord testified that he has received numerous verbal complaints from neighbours in the same rental building, regarding noise in the rental unit. He stated that there have been drug dealers at the rental unit and the police have attended but he has been unable to obtain confidential information from them regarding any criminal charges against the tenant.

Analysis

Section 55 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 to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, 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 failed to obtain written permission from the landlord to sublet the rental unit, contrary to section 34(1) of the *Act*, and that another person is occupying the second bedroom of the rental unit. Accordingly, I do not need to examine the other three reasons indicated on the 1 Month Notice.

The next issue is whether the landlord waived its right to pursue the 1 Month Notice. Residential Tenancy Policy Guideline 11 discusses the issue of waiver:

A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has

been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.

The landlord testified that he accepted rent payments for January and February 2016, such that the tenant's rent is paid in full. Although the landlord accepted rent after the effective date on the 1 Month Notice, I do not find this to be a waiver of the 1 Month Notice. The landlord did not withdraw its Application to enforce the 1 Month Notice, at any time prior to this hearing. The landlord testified that he spoke with the tenant verbally on a number of occasions and most recently on the morning of this hearing to advise that he was still pursuing an eviction of the tenant at the hearing. The landlord stated that the tenant replied by stating that he would not be attending the hearing and that the landlord would need to hire a bailiff to remove him from the property. This is recent evidence of the landlord's intention to pursue the 1 Month Notice and obtain an order of possession against the tenant.

For the above reasons, and given the conduct of the parties, I find that the landlord did not waive its rights to pursue the 1 Month Notice and did not waive the 1 Month Notice

expressly or impliedly. I find that the landlord did not intend to reinstate this tenancy, despite accepting rent payments after the effective date of the 1 Month Notice.

I do not find the 1 Month Notice to be invalid because of the incorrect year (November 2016) stated on the notice. I find that it is clear that the effective date was December 2015, the correct year, and the tenant was aware of the notice and the landlords' intention to pursue his eviction.

The tenant has not made an 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 failure of the tenant to take this action within ten days led to the end of this tenancy on December 31, 2015, the corrected effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 31, 2015. However, the tenant has paid full rent for the entire month of February 2016, so he is entitled to occupy the premises until February 29, 2016.

Accordingly, I find that the landlord is entitled to an Order of Possession, effective at 1:00 p.m. on February 29, 2016.

Conclusion

I grant an Order of Possession to the landlord **effective at 1:00 p.m. on February 29, 2016**. 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: February 05, 2016

Residential Tenancy Branch

