



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- an unspecified "other" remedy.

The tenant did not attend this hearing, although I waited until 1117 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the evidence to the tenant by registered mail on 4 January 2016. On the basis of this evidence, I am satisfied that the tenant was served with the evidence pursuant to section 88 of the Act.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

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

The rental unit is a room within the residential property. This tenancy began three or four years ago. Monthly rent of \$350.00 is due on the first. The landlord testified that he believes the tenant vacated the rental unit on or about 20 January 2016; however, the tenant still has belongings at the rental unit and the landlord is concerned that she will return.

The landlord testified that he received a notice from the municipality on 31 August 2015. That notice set out that the use of the residential property did not comply with the bylaws and orders the landlord to comply. In particular, the landlord testified that the bylaw enforcement officer told the landlord that there could be no more than six unrelated individuals occupying the residential property. There were ten unrelated individuals occupying the rental unit.

On 30 November 2015, the landlord issued the 1 Month Notice to the tenant. The 1 Month Notice was served that day by registered mail and by posting that notice to the tenant's bedroom door. The 1 Month Notice set out an effective date of 1 January 2016. The 1 Month Notice was given on the basis that the rental unit must be vacated to comply with a government order.

The tenant made an application for dispute resolution to cancel the 1 Month Notice on 10 December 2015.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that the reason set out in the notice is met. Paragraph 47(1)(k) of the Act sets out that a landlord may end a tenancy where the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

On the basis of the uncontested evidence of the landlord, I find that the letter dated 31 August 2015 from the municipality constituted an order of a municipal government authority. I find that in order to comply with the 31 August 2015, the landlord was required to reduce the number of unrelated occupants in the rental unit to no more than six. There is nothing in the Act that prescribes in what order the landlord must seek to remove tenants on the basis of "seniority". The landlord was entitled to select which tenancies would end in order to comply with the municipality's order. On this basis, I find that the tenant's occupation of the single room rental unit must be ended on order for the landlord to comply with the municipal government authority. As the 1 Month Notice is substantiated on the basis of paragraph 47(1)(k) of the Act, the tenant's application to cancel the 1 Month Notice is dismissed.

As the tenant has been unsuccessful in her application, she is not entitled to recover her filing fee.

Subsection 55(1) of the Act sets out that 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.

Section 52 of the Act reads:

In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The 1 Month Notice complies with the requirements set out in section 52 of the Act. I have dismissed the tenant's application. In accordance with subsection 55(1) of the Act, I issue the landlord an order of possession effective two days from service on the tenant.

Conclusion

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

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: February 03, 2016

Residential Tenancy Branch

