



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B C Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail deemed delivered February 17, 2016, and despite having served the tenant and filed with the Residential Tenancy Branch an evidence package in response to the tenant's application, the landlord did not appear. The landlord's written evidence has been considered in the preparation of this decision.

Issue(s) to be Decided

Does the landlord have grounds, within the meaning of the *Residential Tenancy Act*, to end this tenancy?

Background and Evidence

This month-to-month tenancy commenced October 1, 2011. The monthly rent of \$660.00 is due on the first day of the month. The tenant paid a security deposit at the start of the tenancy but when the current landlord bought the property it was returned to the tenant in accordance with the landlord's policies.

The landlord inspected the rental unit on November 3, 2015. The landlord submitted photographs of the tenant's unit apparently taken on that date.

The landlord sent the tenant a warning letter dated November 18 advising the tenant that the unit "was cluttered with an excessive accumulation of belongings and that the general state of cleanliness in your unit was found to be poor." The tenant was directed to, among other things, remove and dispose of excessive belongings and to clean all areas in the unit to the landlord's satisfaction.

In a letter dated December 18 the landlord advised the tenant that after an inspection conducted on November 27 it was of the opinion that sufficient improvements in the rental unit had not been made.

Another inspection was conducted during the week of December 14. The inspection was followed up by a letter dated January 29, 2016 advising that the unit was still not to an acceptable standard. The letter, which was accompanied by a 1 Month Notice to End Tenancy for Cause, was left in the tenant's unit on January 29.

The tenant was not in his unit for either of the last two inspections.

The reasons stated on the notice were:

- Tenant . . . has significantly interfered with or unreasonably disturbed 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.

In it's evidence package the landlord filed some photographs apparently taken on January 29, 2016. It also filed three written complaints; dated January 1, January 8 and February 14; all from the same neighbour about bad smells coming from the tenant's unit.

The tenant testified that he rented a storage unit and has moved some furniture and plastic totes to it. His also filed letter from tow other neighbours that stated the tenant had made significant efforts to clean and declutter his unit. These neighbours also stated that they had not smelled any bad odors coming from the tenant's unit.

The tenant's evidence was that he had not received "clear direction as to what specific issues the landlord required him to remedy despite repeated efforts to garner this information from the landlord's representatives." In particular, his statement described several visits to the resident manager where he sought, but did not obtain, clarification of the landlord's expectations.

Analysis

On applications such as this the onus is on the landlord to prove, on a balance of probabilities, the validity of the reasons stated on the Notice to End Tenancy. There is contradictory evidence in this case and the landlord's written evidence alone is not sufficient to tip the balance of probabilities in the landlord's favour. Accordingly, the tenant's application is granted.

Conclusion

For the reasons set out above the tenant's application is granted. The 1 Month Notice to End Tenancy dated January 29, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the Residential Tenancy Act.

As the tenant was successful on his application he is entitled to reimbursement from the landlord of the \$100.00 fee he paid to file it. Pursuant to section 72(1) this amount may be deducted from the April 1, 2016 rent.

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: March 31, 2016

Residential Tenancy Branch