



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, DRI, MNDC, MNSD, O, RR, FF

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;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call provided affirmed testimony. The landlord confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. The tenant confirmed receipt of the landlord's submitted documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act. Both parties are deemed to have been properly served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the tenant withdrew her request for the return of the security and pet damage deposits as the tenancy continues. The landlord did not provide any comment. As such, this portion of the tenant's application is withdrawn and no further action is required.

The tenant requested a monetary order for the return of the security and pet damage deposits and compensation for “no stove” and “no freezer”. The tenant was unable to provide any details about this portion of the claim. The tenant requested a dispute regarding a rent increase that does not comply with an increase permitted by the regulation. The tenant was not able to provide any details about this portion of the claim. The tenant requested that an order for the landlord to comply with the Act, regulation or tenancy agreement. The tenant was unable to provide any details about this portion of the claim. The tenant requested to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided. The tenant stated that she is unable to provide any details about this portion of the claim.

On the tenant’s request to dispute an additional rent increase, I find that as the tenant is unable to provide any details of this portion of application that this portion of the application is dismissed with leave to reapply.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act, for an order for the landlord to make reduce rent for repairs, services or facilities agreed upon but not provided. As these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent or for landlord’s use, I dismiss these sections of the tenant’s claim with leave to reapply.

This hearing was convened at 0930. Initially I was joined by the landlords and the tenant JD. At 1010, the tenant CD joined the hearing.

Despite the parties’ best efforts we were unable to complete the hearing within the allotted time. The hearing was adjourned, both parties were provided details of the adjournment process and that no new evidence was to be submitted, nor would it be accepted. The hearing shall proceed on the adjournment date for the tenant’s application to cancel the notice to end tenancy for cause and for the landlord’s use of the property.

On June 22, 2016 the hearing was reconvened via conference call and both parties attended the hearing and provided submissions. The tenant provided direct testimony that she was not feeling well and was under heavy medication and would like her agent, J.M. to attend and act in her behalf. The landlord did not dispute this request. The hearing proceeded with the tenant’s agent, J.M. and the landlord.

On June 22, 2016 the landlord stated that he wished to cancel the 2 Month Notice as he no longer wished to proceed on that notice. The tenant's agent (the tenant) provided no comment. As such, no further action is required for this portion of the application. The hearing proceeded on the tenant's request to cancel the 1 Month Notice.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

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

Both parties agreed that there was no signed tenancy agreement.

Both parties agreed that on February 3, 2016, the landlord served the tenant with the 1 Month Notice dated February 3, 2016. The 1 Month Notice displays an effective end of tenancy date of March 14, 2016 and sets out that it was being given as:

- the tenant is repeatedly late paying rent;

The landlord's notice also noted, "Dec-Jan-Feb" clarifying that the tenant was repeatedly late during these three months. The landlord also provided direct testimony that the tenant was also previously late for November.

The tenant's agent disputed the 1 Month Notice dated February 3, 2016 stating that the tenant understood that the landlord had cancelled this notice and had allowed the tenancy to continue. The landlord disputed this claim stating that a follow notice was again served to the tenant on April 6, 2016 with the same listed reason again with additional reasons selected.

The landlord stated that the tenant failed to file an application for dispute within the allowed time frame.

The tenant's agent stated that he was not aware of why the tenant had waited until April 13, 2016 to file an application in dispute of the notice, only stating that the tenant understood that the landlord had cancelled the 1 Month Notice dated February 3, 2016..

Analysis

Section 47 (4) of the Act states that a tenant may make an application for dispute resolution within 10 days after the date the tenant receives the notice. In this case, both the landlord and the tenant's agent confirmed that the landlord served the tenant with the 1 Month Notice dated February 3, 2016 on February 3, 2016. The tenant applied for dispute resolution on April 13, 2016. The tenant's agent stated that the tenant understood that the landlord had cancelled the 1 Month Notice dated February 3, 2016 and had allowed the tenancy to continue. The landlord disputed this claim stating that a second 1 Month Notice was issued to the tenant dated April 6, 2016 listing the same reason for cause as well as additional reasons.

On this basis, I find that the tenant's agent has failed to provide sufficient evidence to satisfy me that the landlord had cancelled the 1 Month Notice dated February 3, 2016 to continue the tenancy. The 1 Month Notice dated February 3, 2016 is valid and upheld. The tenant applied for dispute resolution 71 days after the 1 Month Notice dated February 3, 2016 was served, which is well beyond the 10 day limitation period.

Section 47 (5) of the Act states that if the tenant who has received the 1 Month Notice does not make an application for dispute resolution is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. In this case, this required the tenant to vacate the premises by March 14, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The tenant's application to cancel the 1 Month Notice is dismissed.

Conclusion

The tenant's application is dismissed.
The landlord is granted an order of possession.

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 22, 2016

Residential Tenancy Branch