



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNSD, 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 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;

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package in person, but was unable to provide a date of service. The landlord confirmed receiving the notice of hearing package and provided affirmed testimony that it was received on July 1, 2016. The tenant disputed the service date, but was unable to provide a service date. In any event, neither party disputed the service or that there were any issues that would prevent either party from proceeding with the hearing.

The tenant did not submit any documentary evidence. The landlord provided two documentary evidence packages that were personally served to the tenant on July 5, 2016. The tenant confirmed receipt of the landlord's documentary evidence.

I accept the undisputed affirmed evidence of both parties and find that the landlord was properly served with the tenant's notice of hearing package as per section 89 of the Act. I also find based upon the undisputed affirmed evidence of both parties that the landlord's submitted documentary evidence was properly served to the tenant as per section 88 of the Act.

The tenant has stated the request for the return of a security and pet damage deposits was made so that she could obtain them if the tenancy was ending. The tenant also stated that her selection for “other” was not for any other requests. I find that as the tenancy has not yet ended that the tenant’s request for the return of the security and pet damage deposits are premature and dismiss these portions of the tenant’s application with leave to reapply. Both parties were notified that if and when the tenancy would end the normal rules would apply pursuant to section 38 of the Act for the return of the security and pet damage deposits. The hearing proceeded on the remaining item selected by the tenant to cancel the 1 Month Notice.

Issue(s) to be Decided

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

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.

This tenancy began on July 1, 2015 on a fixed term of 12 months until June 30, 2016 as shown by the submitted copy of the signed tenancy agreement dated July 1, 2015. The monthly rent is \$800.00 payable on the 1st day of each month and a security deposit of \$400.00 was paid.

On May 24, 2016, the landlord served the tenant with the 1 Month Notice dated May 24, 2015 by posting it to the rental unit door. The tenant confirmed service of the 1 Month Notice when she returned 4 days later on May 28, 2016. The 1 Month Notice displays an effective end of tenancy date of June 30, 2016 and sets out that it was being given as:

- the tenant or 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;
 - put the landlord’s property at significant risk; or
- the 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 provided undisputed affirmed evidence that the tenant was stealing clothes of another tenant on May 19, 2016 out of a washing machine in the common laundry room. The tenant confirmed, "I did do it". The landlord also referred to the submitted copy of videos of the tenant from #550 putting her laundry in the washing machine on May 19, 2016 at 16:42 hrs followed by the tenant taking clothes out of the same washing machine at 17:12 hrs.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties that the 1 Month Notice dated May 24, 2016 was posted to the rental unit door on May 24, 2016. I also accept the tenant's affirmed testimony that she received it on May 28, 2016 when she returned from the hospital. As such, I find that the tenant was properly served as per section 88 of the Act and is deemed to have received it 3 days later as per section 90 of the Act.

I accept the undisputed affirmed evidence of both parties and find that the landlord has established at least one of the reasons set out in the notice. The landlord has claimed that the tenant had taken clothing from the washing machine belonging to another tenant and that it was caught on video. I also accept the tenant's undisputed affirmed evidence that she "did do it". As such, I find that the 1 Month Notice dated May 24, 2016 is valid. The tenant's application to cancel the 1 Month Notice is dismissed. Pursuant to section 55 (1) of the Act, the landlord shall be granted an order of possession effective two days after it is served.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: July 12, 2016

Residential Tenancy Branch