



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Era West Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNSD, MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord. The landlord had arranged for 3 witnesses to attend however none of the witnesses were called to provide testimony.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim for compensation or for the return of her security and pet damage deposits. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's monetary claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim for compensation and return of her deposits. I grant the tenant leave to re-apply for her monetary claims.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

During the hearing the tenant submitted that she had served some additional evidence by registered mail on Friday, September 23, 2016. At the time of the hearing, I had not received this evidence.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

Rule of Procedure 3.11 states that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

The tenant testified that the evidence consisted of, at least in part, some additional photographs. The tenant stated that these photographs include pictures of the unit that were taken on Thursday, September 22, 2016 or approximate 1½ months after receipt of the 1 Month Notice.

The tenant submitted that she did not submit this evidence until so late because she understood that the landlord might withdraw the Notice if she completed some work on the property. The landlord testified that there was no such agreement.

Regardless of the reasons the tenant did not served this additional evidence until 5 days before the hearing using a method that is deemed received in 5 days, I find the tenant has failed to submit the evidence in accordance with the requirements set out in the Rules of Procedure.

Further, even if I were to accept the additional evidence, I find that it would not be relevant as to whether or not the landlord had cause to end tenancy when the Notice was issued on August 3, 2016 since they were photographs 1½ months later.

As such, I have not considered this additional evidence.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The landlord submitted the following relevant documents into evidence:

- A copy of a tenancy agreement signed by the parties on August 22, 2014 for a 1 year fixed term tenancy beginning on September 1, 2014 for a monthly rent of

\$910.00 due on the 1st of each month with a security deposit of \$450.00 and a pet damage deposit of \$350.00 paid; and

- A copy of a 1 Month Notice to End Tenancy for Cause issued on August 3, 2016 with an effective vacancy date of September 8, 2016 citing the tenant has caused extraordinary damage to the unit or property; the tenant has not done required repairs to damage to the unit; and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submitted that they first noticed some issues with the rental property in December 2014 with minor issues of damaged blinds and clutter in the mud room. The landlord stated that when they completed an inspection in May 2015 they found excessive clutter; at least two dogs; damage to moulding and doors. They stated that they also advised the tenant that the unit was a fire hazard based on the clutter and asked to clean the unit. They also asked her to 'register' her pets with the landlord. The landlord submitted that the tenant started to try to clean up but she then stopped and she has never 'registered' her pets with the landlord.

The landlord testified that they attempted to complete another inspection in October 2015 but due to delays from the tenant the inspection was not completed until mid-November 2015.

The landlord submitted that they have been attempting to work with the tenant to help her get the property and rental unit cleaned up and repaired and despite some attempts on the part of the tenant she has failed to do anything to rectify the situation.

The landlord stated they did another inspection in July 2016 and provided direction to the tenant to complete some specific tasks within a reasonable time but that she failed to do so and so they issued the Notice.

In support of their position the landlord has submitted several photographs of the rental unit prior to the start of the tenancy; shortly after the start of the tenancy; and as of July 27, 2016. I note the landlord has also submitted additional photographs taken in September 2016, however I have not considered these photographs as they were taken after the Notice was issued.

The landlord has submitted copies of email communication, throughout the tenancy, between the tenant the landlord where the tenant explains the extent of work she has completed and why, in some cases, she hadn't been able to complete anymore work.

The tenant submitted that she had been complaining to the landlord for quite some time about a number of issues related to the rental unit including problems with the mould and the ceiling in the mudroom. She stated she also had been complaining about not having a working fridge but that the landlord did nothing about these complaints.

The tenant she did not make these complains herself in most case because she worked and couldn't do it herself and because she has grown to be afraid of dealing with the landlord. She stated the person who lodged her complaints for her was another tenant show has since moved out of the property. She stated this other tenant also had mould problems in her unit.

In support of her position the tenant has submitted several photographs of the rental unit. The tenant also stated that she did not believe the photographs taken at the start of the tenancy were actually taken at that time. She stated that there is not a white picket fence outside anymore.

The tenant stated that she had sent some photographs to a local inspector who will be coming for a site visit in the next few days. She stated that this inspector told her that none of the mould issues were caused by her actions.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property; the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time; or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

I am satisfied from the evidence of both parties that the rental unit has a significant amount of extraordinary damage. Based on the photographs submitted by both parties, I am surprised the tenant is able to live in the rental unit at all.

I find the tenant has provided no evidence to support her position that the photographs the landlord attributes to the start of the tenancy were taken any other time than at the start of the tenancy. As such, I find these photographs show the condition of the unit on or before the start date of the tenancy.

I find the photographic evidence taken on July 27, 2016 by the landlord show the rental unit in a condition of complete chaos. I find, for example, the photographs of the bathroom show a room that I am convinced is or has been used as a bathroom for quite some time. In addition, there are narrow pathways through piles and piles of "stuff" and photographs of rotting cupboards under a sink.

I am persuaded by the landlord's testimony and evidence that they had been attempting to work with the tenant to bring the property back. I also accept the tenant has attempted to clean up some of the property.

However, I find the tenant has provided no evidence that she has ever made a complaint to the landlord regarding any of things she stated in her testimony. While she

stated she had a neighbour submit her complaints for her she did not provide any supporting documents, such as a written statement from her or from any other witness.

Based on the all of the above, I find the landlord has established, on balance of probabilities, the damage to the rental unit was caused by the tenant or by neglect on the part of the tenant. As a result, I find the landlord has established the tenant has caused extraordinary damage to the property and the landlord has cause to end the tenancy pursuant to Section 47 of the *Act*.

Therefore, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Section 47(2) states that a notice given under Section 47 must end the tenancy on a date that is not earlier than 1 month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Section 53 of the *Act* allows that if a landlord or tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the applicable section of the *Act*, the effective date is deemed to be the earliest date that complies with the relevant section.

Since the landlord issued the 1 Month Notice on August 3, 2016 I find the earliest the landlord could end the tenancy for cause, to be compliant with Section 47(2), would be September 30, 2016. In accordance with Section 53 I find the effective date is deemed to be September 30, 2016.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on August 3, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **September 30, 2016 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: September 28, 2016

Residential Tenancy Branch

