



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eightland Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR, OPC, MND, MNR, MNSD, FF

Tenant: MT, CNR, CNC, DRI, ERP, LRE

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy; to cancel 2 notices to end tenancy; to dispute an additional rent increase; to have the landlord complete emergency repairs and to restrict the landlord's access to the rental unit.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

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; the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the landlord's claim for compensation for damage to the rental unit or the tenant's claim to suspend or set conditions on the landlord's right to enter the rental unit; additional rent increase; or emergency repairs. The parties were given a priority hearing date, originally, in order to address the question of the validity of the 1 Month Notice to End Tenancy.

The landlord's monetary claim and the tenant's other claims are unrelated in that the basis for them rest 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 or the 10 Day Notice. I exercise my discretion to dismiss the landlord's claim for compensation for damage to the property and the tenant's claim for suspending or setting conditions on the landlords' right to access the rental unit; to make emergency repairs; and an additional rent increase. I grant both parties leave to re-apply for these other claims.

The tenant sought additional time to submit her Application for Dispute Resolution seeking to cancel the 1 Month Notice to End Tenancy. However, she testified that she received the Notice on July 4, 2016 and I confirmed that she submitted her Application on July 12, 2014. When a tenant receives a 1 Month Notice they are allowed 10 days to file their Application to dispute the notice. I find the tenant submitted her Application on the 8th day after receiving the Notice and as such she does not need additional time. I amend the tenant's Application to exclude the matter of additional time.

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 and a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46, 47, and 66 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on April 1, 2016 for a 1 year fixed term tenancy beginning on April 1, 2016 for a monthly rent of \$1,550.00 due on the 1st of each month with a security deposit of \$725.00 required. I note there is a handwritten clause that states if the tenant pays rent prior to the 1st of the month the tenant will receive a rent reduction of \$100.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 2, 2016 with an effective vacancy date of August 16, 2016 citing the tenant failed to pay rent in the amount of \$1,550.00 due on August 1, 2016.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy issued on July 4, 2016 with an effective vacancy date of August 5, 2016 citing the tenant was repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk and the tenant has engaged in illegal activity that has or is likely to cause damage to the landlord's property; adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord submitted the tenant has been late paying rent every month since the start of the tenancy. The tenant agreed that she has been paying rent late because she has been dealing with two government agencies and it has taken several months to sort everything out. The parties confirmed that the tenant still owes the landlord \$550.00 for the month of August 2016 and nothing has been paid yet for September 2016.

The landlord also provided testimony that he has received a number of complaints from other occupants about noise disturbances from the tenant and her children at all hours of the day and night. The tenant disputes all of these accusations and states that the landlord has never given her any indication there were any problems. I note however that the tenant later testified that she did meet the new tenant below her last night when he came up to ask her to turn her music down.

The landlord stated that the tenant has caused damage to the rental unit because of flooding of the bathroom and various items, including an e-cigarette being lodged in the toilet. The tenant

acknowledges that trying to keep an eye on 4 children by herself is quite difficult and she is doing the best she can.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

As noted above, Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

While the tenant provided testimony that her difficulties in paying rent in time relate to her interactions with government agencies the tenant has provided no evidence to support these assertions or that any delays in her obtaining any assistance have caused her to be late paying rent.

As such, based on the testimony of both parties, I find the tenant has been late paying rent for all 5 months of her tenancy. Therefore, I find the landlord has established the tenant has been repeatedly late paying rent and is allowed to end the tenancy on that ground.

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.

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.

In the case before me, I find that the effective date in the 1 Month Notice of August 5, 2016 does not comply with the requirements under Section 47(2) and I amend the effective date to August 31, 2016 pursuant to Section 53.

As I have made this determination I make no other findings of fact or law in regard to the additional causes noted in the 1 Month Notice to End Tenancy for Cause or the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on August 2, 2016.

Also based on the testimony of both parties, I find the tenant owes the landlord \$550.00 in rent for the month of August 2016.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution.

I find the landlord is entitled to an order of possession effective **two days 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$650.00** comprised of \$550.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$725.00 in satisfaction of this claim leaving a balance of \$75.00 in the security deposit to be dispersed in accordance with the *Act* at the end of the tenancy.

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 01, 2016

Residential Tenancy Branch