



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for Cause and to recover the filing fee from the tenant for the cost of this application.

The tenant, the landlords and Legal Counsel for the landlords attended the conference call hearing. The parties gave sworn testimony. The landlords provided documentary evidence to the Residential Tenancy Branch but did not provide this evidence to the tenant in advance of this hearing. In consideration of the Rules of Procedure particularly Rule 3.11 and Rule 3.14 I have not considered the landlords' documentary evidence with the exception of the One Month Notice to End Tenancy for Cause (The Notice) which the tenant confirmed he had received prior to the hearing. I have reviewed all oral and admissible written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause?

Background and Evidence

The parties agreed that this month to month tenancy started on July 01, 2016. The tenant is the primary tenant renting this unit but does not live in the unit. The tenant rents the unit out as a recovery home for other occupants. Rent for this unit is \$2,600.00 per month. Rent is due on the 1st day of each month. The tenant paid a security deposit of \$1,300.00 on July 01, 2016.

The landlord testified that they have received multiple complaints from the neighbours and occupants and the police have been out to the unit on numerous occasions. There has also been an inspection by the chief building inspector who determined that at that time there were seven occupants in this unit. The zoning for this area is for single family dwellings only and the landlords have now been served three bylaw infraction tickets from the township. The township and the RCMP want this unit for a single family dwelling. This is for one or more persons living as a single household in one dwelling and consists of individuals related by blood, marriage, common-law, adoption, foster parenting or a maximum of four unrelated persons.

The landlords testified that the police officer also informed the landlords that there was illegal activity taking place in the unit but they are unable to provide details at this time due to privacy issues. Furthermore, the home is deteriorating due to these occupants smoking in the unit.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) on July 23, 2016 in person. The landlords have provided a copy of the Notice in documentary evidence. The Notice has an effective date of August 24, 2016. The Notice indicates the following reasons to end the tenancy:

- 1) *The tenant has allowed an unreasonable number of occupants in the unit*
- 2) *The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to*

- (ii) Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, or*
- (iii) Jeopardize a lawful right or interest of another occupant or the landlord.*

The tenant disputed the landlord's claims. The tenant testified that he did not receive the Notice until the first week of August, 2016. The tenant agreed he did not file an application to dispute the Notice.

The tenant testified that there are only four people living in this unit and two of these are living in a common law relationship. The tenant testified that they help people with drug problems and are a recovery centre. The tenant testified that no one smokes inside the unit and although he is not there every day he does have a manager in the unit. The tenant testified that he was told by the police officer that they should be allowed to stay and the police have only been out two or three times. The tenant disputed the reports from the City Inspector saying there were seven people in this four bedroom unit.

The tenant requested a month to move everyone out of the unit if the landlord is successful.

The landlords requested an Order of Possession for October 15, 2016 to allow extra time for the tenant to move out the occupants of the unit. The landlord also requested the recovery of the \$100.00 filing fee.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The Notice was served in person and I am satisfied that the Notice was served on July 23, 2016. The

landlord has provided a signed proof of service document showing that the tenant was served at 11.00 a.m. on this date, in person.

The tenant did not dispute the Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act*. The landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee from the tenant of **\$100.00**. The landlord may retain this amount from the tenant's security deposit leaving a balance of **\$1,200.00** which must both be dealt with at the end of the tenancy in accordance with s. 38 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on October 15, 2016**. This Order must be served on the Respondent. If the Respondent fails 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: September 26, 2016

Residential Tenancy Branch

