



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sierra Holdings Company Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and for an order of possession pursuant to a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The landlord's representatives and the tenant called in and participated in the hearing. The tenant acknowledged that she was served with the landlord's application for dispute resolution and evidence package before the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to a one month Notice to End Tenancy dated July 28, 2016?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Victoria. The tenancy began in August, 2012. The landlord has claimed for a monetary award in the amount of \$45.00, being an NSF cheque charge incurred when the tenant's February rent cheque was returned due to insufficient funds. The tenant acknowledged at the hearing that she was responsible for the NSF cheque charge.

The landlord also sought an order of possession pursuant to a one month Notice to End Tenancy for cause. The Notice to End Tenancy was dated July 28, 2016 and was served on the tenant by posting it to the door of the rental unit on July 28, 2016.

The Notice to End Tenancy required the tenant to move out of the rental unit by August 31, 2016. It cited three reasons for ending the tenancy; that the tenant has allowed an

unreasonable number of occupants in the rental unit; that she 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 and that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after notice to do so. The landlord referred to an incident report given to the tenant in May that referred to an additional occupant in the rental unit, to noise complaints and to the continuing failure to pay the NSF cheque charge.

The tenant acknowledged at the hearing that she received the Notice to End Tenancy. She said that she discussed it with the landlord's representative and thought it had been resolved, although she later acknowledged that he told her that the landlord would not withdraw the Notice to End Tenancy and intended to proceed to enforce it. The tenant said that she did not understand that she was required to file an application for dispute resolution if she intended to dispute the Notice to End Tenancy. She said that she was served with the landlord's application for dispute resolution and thought that she could dispute the landlord's application without having to make her own application for dispute resolution.

At the hearing the landlord's representatives were asked whether the landlord was insistent upon ending the tenancy. The landlord's representative said that the landlord was not prepared to set aside the Notice to End Tenancy, but the landlord would allow the tenant until November 30, 2016 to move provided November rent was paid.

Analysis

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a one month Notice to End Tenancy for cause does not make an application for dispute resolution within 10 days after the date the tenant receives the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the unit by that date.

Although the landlord did not submit any evidence to support the allegation that the tenant has engaged in any form of illegal activity, The landlord did claim that the tenant has an unreasonable number of occupants in the rental unit which is a bachelor suite and that she has breached a material term of her tenancy. The tenant said that her children visit her regularly, but she denied that there are other occupants in the rental unit. The tenant did not apply to dispute the Notice to End Tenancy and the Notice to End Tenancy is in the proper form as required by the *Residential Tenancy Act*. She was advised by the landlord's representative that the landlord would not withdraw the Notice and she is therefore conclusively presumed to have accepted that the tenancy

ended on August 31, 2016, which was the effective date of the Notice to End Tenancy. The landlord has agreed to allow the tenant to remain in the unit until November 30, 2016 in order to find other accommodation provided November rent is paid; otherwise the tenant must vacate by October 31, 2016. I grant the landlord an order of possession effective November 30, 2016 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

The landlord is entitled to a monetary award in the amount of \$45.00 for an NSF charge and is entitled to recover the \$100.00 filing fee for this application, for a total award of \$145.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord has been granted an order of possession effective November 30, 2016 and a monetary order in the amount of \$145.00.

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: October 12, 2016

Residential Tenancy Branch