



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNC

Landlord's application: OPC, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a one month Notice to End Tenancy for cause dated September 3, 2016. The landlord applied for an order of possession pursuant to the same Notice. The tenant applied to dispute the Notice to End Tenancy on September 13, 2016. The landlord filed his application for an order of possession on October 6, 2016. He testified that the tenant was personally served with the application and Notice of Hearing at the rental unit on October 6, 2016. The landlord called in and participated in the hearing together with his agent. The tenant did not call into the hearing and did not participate despite that fact that she was personally served with notice of the hearing and despite the fact that this was also the hearing of her own application.

Issue(s) to be Decided

Should the Notice to End Tenancy dated September 3, 2016 be cancelled?

Is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began April 15, 2016. The monthly rent is \$900.00, payable on the first of each month. The tenant paid a security deposit of \$450.00 at the start of the tenancy.

On September 3, 2016 the landlord's agent personally served the tenant with a one month Notice to End Tenancy for cause. The Notice was dated September 3, 2016 and it stated that the tenant must move out of the rental unit by October 4, 2016. The reasons for the Notice to End Tenancy were that the tenant has seriously interfered with or unreasonably disturbed another occupant or the landlord; that she has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that she has put the landlord's property at significant risk. The landlord also claimed that the tenant has engaged in illegal activities and has caused extraordinary damage to the property. The effective date when the tenant must move out of the rental unit was incorrectly stated; the earliest date that the tenant could be required to move out pursuant to the Notice to End Tenancy is October 31, 2016.

The landlord provided letters from five other tenants in the rental property. Each of them submitted written complaints to the landlord that they have been disturbed by the tenant and her frequent guests. They complained about noise, traffic from numerous visitors and garbage strewn around the rental property and common areas by the tenant and her guests.

Analysis

Section 55 (1) of the *Residential Tenancy Act* provides as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The tenant applied to cancel the landlord's Notice to End Tenancy. She did not attend the hearing and her application is dismissed without leave to reapply. The Notice to End Tenancy given to the tenant was prepared on the proper form provided by the Residential Tenancy Branch and it contained the necessary information required by the Act. The Notice to End Tenancy incorrectly stated the effective date of the Notice; it

said that the tenant must move out by October 4, 2016, but Section 53 of the *Residential Tenancy Act* provides that if a landlord's Notice to End Tenancy gives notice to end a tenancy on a date that does not comply with the Act, the effective date will be deemed to be changed to the earliest date that complies with the section. In this case the earliest date that the Notice can be effective is October 31, 2016, which is the last day of the month before rent is payable under the tenancy agreement.

The tenant's application to cancel the Notice to End Tenancy has been dismissed without leave to reapply. The landlord has filed his own application for an order of possession pursuant to the Notice to End Tenancy and based on his undisputed evidence, I find that there is ample cause to uphold the Notice to End Tenancy. I find that the tenancy will end pursuant to the Notice to End Tenancy on October 31, 2016. The landlord is entitled to an order of possession effective October 31, 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 recover the \$100.00 filing fee for this application. He may retain the sum of \$100.00 from the filing fee that he holds without further order leaving a security deposit balance of \$350.00 to be addressed at the end of the tenancy in accordance with the Act.

Conclusion

The tenant's application has been dismissed without leave to reapply. The landlord's application has been granted and an order of possession issued effective October 31, 2016 after service of the tenant.

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 28, 2016

Residential Tenancy Branch

