



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes CNC LRE LAT FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47
- authorization to change the locks to the rental unit and an order to suspend or set conditions on the landlord's right to enter the rental pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act. In the hearing, the tenant withdrew his application to change locks and set conditions on the landlord's right to enter the rental unit.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began approximately August 2001 with a current monthly rent of \$646.00 plus \$10.00 monthly parking fee payable on the 1st day of each month.

The landlord personally served the tenant with the 1 Month Notice on October 28, 2016 on the grounds that the tenant put the landlord's property at significant risk and that the rental unit must be vacated to comply with a government order.

The landlord did not advance any argument in the hearing on the grounds that the tenant put the landlord's property at significant risk so the Notice is dismissed on this ground.

On the grounds that the rental unit must be vacated to comply with a government order, the landlord is relying on a previous Residential Tenancy Branch decision dated April 19, 2016. In that decision, the parties reached a settlement by which one of the settlement terms required the landlord to fix a leak at the rental unit. The landlord submits that it has made numerous unsuccessful attempts to fix the leak since this previous decision and now requires the unit to be vacant so they can perform required repairs from the interior of the unit.

The tenant is disputing the landlord's argument that the unit is required to be vacant in order for the repairs to be carried out.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

I find that the previous Branch decision relied upon by the landlord is not a government order which requires the rental unit to be vacated. In that decision the landlord is ordered to perform repairs and there is no order for the landlord to vacate the rental unit.

If the landlord requires vacant possession in order to renovate or repair the rental unit, the landlord may issue a 2 Month Notice to End Tenancy under section 49 of the Act. A landlord may end a tenancy under this part if the landlord has all the necessary permits and approvals required by law, and intends in good faith to renovate or repair the rental unit. The landlord would also have to demonstrate that it requires vacant possession to carry out the renovations or repairs.

I find that the landlord failed to prove sufficient grounds to issue the 1 Month Notice.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenants may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, dated October 28, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: December 15, 2016

Residential Tenancy Branch