



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 conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on December 9, 2016 for an Order of Possession based on a notice to end tenancy for cause and to recover the filing fee from the Tenant.

An agent for the Landlord and the Tenant appeared for the hearing. The Tenant was assisted by her mother and an advocate. Only the Landlord and Tenant provided affirmed testimony. The Tenant confirmed personal receipt of the Landlord’s Application and the Notice of Hearing documents. The Tenant confirmed that she had not provided documentary evidence prior to this hearing but had appeared to dispute the notice to end tenancy. The hearing process was explained and the participants had no questions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy started on August 1, 2016 for a fixed term of three months after which the tenancy continued on a month-to-month basis. A written tenancy agreement was completed and the Tenant paid \$437.50 as a security deposit at the start of the tenancy which the Landlord still retains. Rent is payable by the Tenant in the amount of \$875.00 on the first day of each month. The Landlord’s agent confirmed the Tenant was not in any rental arrears and the Tenant had been issued with rent receipts for use and occupancy only since the notice to end tenancy was served.

The Landlord’s agent testified that she personally served the Tenant with a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) on November 28, 2016. The Landlord provided a copy of the 1 Month Notice which shows a vacancy date of

December 31, 2016, and states the reasons for ending the tenancy is because: the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; the Tenant has put the Landlord's property at significant risk; and, the Tenant has engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the Landlord.

The Tenant confirmed that she received both pages of the two page 1 Month Notice personally on November 28, 2016. The Tenant was referred to the second page of the 1 Month Notice which gives an opportunity to the Tenant to dispute it by filing an Application within ten days of receiving it.

The Tenant confirmed that she did not make an Application. The Tenant explained that she was not aware that she could dispute the 1 Month Notice citing the fact that she has mental health issues that prevented her from applying. However, in this respect, the Tenant failed to provide any medical evidence to show how her medical conditions prevented her from applying. Furthermore, if the Tenant was aware that she had mental health issues at the time she received the 1 Month Notice, she would have been obligated to seek assistance immediately from an advocate or any other means to apprise herself of her rights and obligations with respect to the 1 Month Notice.

The Landlord's agent was not willing to allow the tenancy to continue explaining her obligations to other residents in the building and that she could no longer risk the safety and wellbeing from the noise disturbances created by the Tenant. However, the Landlord agreed to extend the vacancy date on the 1 Month Notice to February 28, 2017 to allow the Tenant sufficient time to vacate the rental unit. The Landlord also agreed to allow the Tenant to vacate earlier than the end of tenancy date if the Tenant finds alternative accommodation in the interim time and if the Tenant vacates before January 31, 2017, there will be no requirement to pay rent for February 2017.

Analysis

I have examined the 1 Month Notice and I find that it was completed with the correct information on the approved form as required by Section 52 of the *Residential Tenancy Act* (the "Act"). Section 48(5) of the Act allows a Tenant to dispute a 1 Month Notice by making an Application within ten days of receiving it. There is no evidence before me that the Tenant disputed the 1 Month Notice. I also find that the Tenant failed to provide sufficient evidence to show that the time limits to allow the Tenant to file an application should be extended under the Act.

Section 48(6) of the Act states that if a tenant fails to make an Application within ten days, the Tenant is conclusively presumed to have accepted that the tenancy ended on

the vacancy date of the 1 Month Notice and must vacate the rental unit by that date. This is also detailed on page two of the 1 Month Notice. As a result, I must grant the Landlord's request for an Order of Possession.

Pursuant to the verbal agreement of the Landlord's agent, the Order of Possession will be effective on February 28, 2017 at 1:00 p.m. This order must be served onto the Tenant and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit on or before this date and time. The Tenant maybe held liable for any costs associated with the enforcement of the order. Copies of the order are attached to the Landlord's copy of this Decision.

The Landlord agreed the Tenant may vacate the rental unit earlier but must still pay full rent for February 2017 **if** she continues to occupy the rental unit **for any duration after** January 31, 2017. For example, if the Tenant vacates the rental unit on January 28, 2017 she will not have to pay any rent for February 2017; if the Tenant vacates on February 6, 2017, the Tenant must pay rent on February 1, 2017 for the entire month.

Since the Landlord has been successful in this Application, I also grant the \$100.00 filing fee to the Landlord. The Landlord may achieve this relief by deducting this amount from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenant failed to dispute the 1 Month Notice. The Landlord is granted an Order of Possession effective at 1:00 p.m. on February 28, 2017. The Landlord may recover the filing fee from the Tenant's security deposit. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 17, 2017

Residential Tenancy Branch