



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated January 5, 2017 and setting the end of tenancy for February 28, 2017.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The named respondent was the resident manager for the landlord. The representative of the landlord testified he has resigned and is under medical care for stress resulting from this incident.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on January 5, 2017. The Tenant acknowledged he received the Notice to End Tenancy on January 6, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on January 18, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated January 5, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2016. The written tenancy agreement provided that the tenant(s) would pay rent of \$2417 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$1208.50 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord

The landlord seeks to end the tenancy based on the following evidence:

- She produced a statutory declaration from the previous manager stating:
 - The rental unit had a constant pungent odour associated with it.
 - In December my wife and I encountered two non-residents in the common pool area that appeared to be doing illegal drugs. When we learned they were associates of the tenant we had a meeting with him. He advised us those non-residents would not returned. He asked that another person named John be a resident. We declined his request.
 - On January 3, 2017 at about 10:30 a.m. I found an unknown male severally physical injured. His arm and nose were both broken and his face and body had numerous lacerations. He told me that he had been beaten with baseball bats by the tenant and others.
 - Another resident called the police before I had a chance. I went to the second floor and discovered another non-resident and ordered him to leave the building. The tenant appeared from his room and I gave told him he would have to give me notice to leave. He responded in a threatening way.

- On January 17 I encountered the tenant and others in the stairwell. In response to my question he showed hostility towards me.
- The resident manager resigned shortly after this incident
- The landlord testified that after the police arrived on January 3, 2017 they approached the rental unit with extreme caution. The police spent 30 to 36 hours searching the suite. They found a quantity of illegal substances and three large python snakes in the suite. The resident manager was told that if the tenant returns he should call 911 and was not to approach the tenant as he was considered dangerous.
- After meeting the tenant in the stairwell on January 17, 2017 the manager resigned his position and has not returned to the building. He is on medical stress leave.
- We have made a request to the Vancouver Police Department under the Freedom of Information Act but we have received a response.
- The tenancy agreement prohibits animals, fish, birds, insects or pets of any kind.

The Tenant disputes the landlord's evidence and gave the following testimony:

- He was not around when the unnamed person was beat up and he denies being involved.
- The landlord acted illegally in allowing the police to enter the rental unit. He lost some of his belongings as a result including a cellphone, computers, Gameboy etc.
- He denies threatening the building manager.
- He admits that 3 snakes were removed. They were boa constrictors and were in cages. They belonged to his roommate.
- The tenant is the only person named in the tenancy agreement to be residing in the rental unit.
- The tenant refused to pay the rent as the landlord breached the tenancy agreement in allowing the police to enter without notice.
- He has not been charged as a result of the assault or for any other reason.

The landlord served a 10 day Notice to End Tenancy for non-payment of rent and is in the process of making a Direct Request application for an Order for Possession. The tenant testified he did not pay the rent because the landlord wrongfully entered his room. As a courtesy I have referred the parties to section 25(1) of the Act.

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Analysis:

The tenant acknowledged receipt of the one month Notice to End Tenancy on January 6, 2017. The Act provides that he has 10 days in which to file an Application for Dispute Resolution for an order cancelling the Notice. The Tenant failed to file the Application within that required time period. Section 66(1) provides that the time period can be extended only in exceptional circumstances.

Director's orders: changing time limits

- 66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

Policy Guideline #36 includes the following provision:

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² provide that an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances***. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the

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The tenant testified he failed to file within the required time period because he was stressed out, not aware of the requirement and confused. The one month Notice contains a statement that it must be filed within 10 days. I determined the Tenant failed to establish exceptional circumstances exists for the following reasons:

- The failure to meet the relevant time limit was caused or contributed to by the conduct of the tenant.
- The tenant failed to present sufficient evidence that might be a persuasive reason for not meeting the time period.
- The failure to know the applicable law or procedure is not an excuse.

- The failure to pay attention to the applicable procedure is not an excuse.

As a result I ordered the application for more time to file the application be dismissed. I further determined on this basis alone the tenant's application should be dismissed.

In addition I determined the Tenant failed to provide sufficient reason to have the Notice to End Tenancy be cancelled on the merits. The tenancy agreement clearly states no pets of any sort are permitted. The tenant is responsible for those he permits into the rental unit. The tenant acknowledged he was aware his room had three snakes. In my view this significantly interfered with or unreasonably disturbed another occupant or the landlord and has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The presence of a snake such as this is a major concern for the health or safety or the building.

It may very well be there are grounds to end the tenancy based on the conduct of the tenant in relation to the victim who was assaulted and in relation to the resident manager who is now on stress leave. The resident manager did not attend the hearing and was not available to testify. I determined it was not appropriate to make a determination on this issue as the resident manager did not testify.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective February 28, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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: February 14, 2017

Residential Tenancy Branch