



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47, and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent, NP, testified on behalf of the landlord in this hearing, and was given full authority by the landlord to do so.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with copies of the tenant's Application. The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find that the tenant was duly served with copies of the landlord's evidence. The tenant did not submit written evidence for this hearing.

The landlord's agent ('the landlord') testified that he served the tenant with the 1 Month Notice on November 13, 2016 by posting it on the tenant's door. The tenant did not dispute the receipt of this notice. I find the tenant duly served with the 1 Month Notice, pursuant to section 88 of the *Act*.

Issues to be Decided

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

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on August 1, 2014. The landlord submitted the 1 Month Notice to End Tenancy on the grounds that the tenant had repeatedly made late rent payments

as well as for causing extraordinary damage to the unit/site or property. The landlord's agent, NP, testified that the tenant has been repeatedly late making his rent payments, with multiple 10 Day Notices to End Tenancy ('10 Day Notice') issued as a result. The landlord submitted, in their evidence, copies of 10 Day Notices issued on October 3, 2015, January 7, 2016, April 3, 2016, November 11, 2016, December 2, 2016, and January 3, 2017. The current rental amount is \$925.00 due on the first of each month.

The landlord also testified that the building has a bed bug problem, which cannot be treated properly due to the state of the tenant's unit. The landlord testified that the tenant has piles of belongings piled up, which is supported with photos that the landlord submitted as part of their evidence.

The tenant did not dispute service or the validity of these 10 Day Notices. He testified that although he was repeatedly late in paying his rent, he did always respond to the 10 Day Notices by paying his rent in full. He testified that he was dealing with bankruptcy and as a pensioner he was unable to pay on time. The tenant disputes the landlord's testimony that he had a bed bug problem in his unit, and that he did not bring any bed bugs into the building.

The landlord requested an Order of Possession as the tenant has demonstrated a recurring inability to pay the rent on time.

Analysis

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(b) the tenant is repeatedly late paying rent...

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant did not file for dispute resolution until December 23, 2016. I find that the tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended

on the effective date of the 1 Month Notice, December 31, 2016. In this case, this required the tenant and any occupant on the premises to vacate the premises by December 31, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

As the tenant was not successful in his application, I am now allowing the tenant's application for recovery of the filing fee.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice **is dismissed**. I find that the landlord's 1 Month Notice is valid and effective as of December 31, 2016.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The tenant's application for recovery of the filing fee is dismissed.

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 22, 2017

Residential Tenancy Branch