



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, RP, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a One Month Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord's agents attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's

application to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining sections of the tenant's claim at this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2015 for an initial term of one year, thereafter, reverting to a month to month tenancy. Rent for this unit is currently \$1,157.63 a month and is due on the 1st day of each month in advance. The tenant paid a security deposit of \$562.50 at the start of the tenancy.

The landlord's agent CF testified that the tenant has been repeatedly late paying rent. In 2015 the tenant paid her rent late in July and in 2016 the tenant paid her rent late nine times. CF has provided a copy of the tenant's rent ledger showing the late rent payments. CF testified that each time the tenant was late a 10 Day Notice to End Tenancy was served upon the tenant and warning letters were also given to the tenant concerning the late rent. The tenant pays her rent by debit at the office and the office is always open on the first of each month from 9.30 a.m. to 6.00 p.m.. If CF is not in the office CF's phone number is displayed on the wall and other signage. CF will only be elsewhere in the building and only 10 minutes away if the tenant calls to say she is at the office to pay her rent.

CF testified that the tenant has let an unreasonable number of occupants live in her unit. The landlord has been notified by other tenants and has noticed two additional adults staying in the tenant's unit from September, 2016. The tenant was sent a warning letter concerning this and after this warning letter one adult continues to live in the unit.

CF testified that clause 16 of the tenancy agreement prohibits a tenant installing any heavy appliances without the landlord's written permission. In September, 2016 during an inspection of the unit it was noticed that the tenant had installed a washer and dryer. A warning letter was sent to the tenant but these appliances continue to be used in the tenant's unit. Further to this the tenant has kept a dog since the start of the tenancy without the landlord's written permission and without payment of a pet damage deposit. This has also breached the tenancy agreement clause 30. The tenant was sent a warning letter in September, 2016 concerning this and was told she could have written permission if she paid a pet damage deposit and produced a dog licence. The tenant did not pay the pet damage deposit until December, 2016 and has not produced a dog licence.

CF testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) on January 26, 2017. The Notice was served by posting it to the tenant's door and it has an effective date of February 28, 2017. The Notice provided the following reasons to end the tenancy:

- 1) The tenant is repeatedly late paying rent.*
- 2) The tenant has allowed an unreasonable number of occupants in the unit*
- 3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

CF testified that the landlord seeks to have the Notice upheld and requested an Order of Possession effective on March 31, 2017.

The tenant disputed the landlord's claims. The tenant testified that she had a landlord before this one who was never in the office and when she goes to pay her rent. This agent for the landlord is never in the office so she cannot pay her rent on the first of each month.

The tenant testified that regarding additional occupants the tenant has six children and works full time so these people were her day care workers and there is now only one extra adult but he does not live in the tenant's unit. The tenant testified that sometimes she has to work a night shift so this day care worker would have to spend the night in the tenant's unit to look after her children occasionally. The tenant testified that she has seven beds in her unit one for each of her children and one for herself.

The tenant testified that with regard to the landlord's claim that the tenant has breached the tenancy agreement; the tenant testified that the washer and dryer are apartment sized ones that operate off a 110 volt plug and can be plugged into any outlet without any permanent installation. These are not classed as heavy appliances and only weigh the same as a Television. The washer is filled with cold water from a bucket and drains into the sink. This uses less water than a bathtub.

The tenant seeks to have the Notice cancelled and for the tenancy to continue while she looks for a new place to live.

KS testified that this clause in the tenancy agreement is there to prevent tenants getting their own washer and dryers as the building is older and if a lot of tenants had their own washers it would affect the building's plumbing and could cause damage to the pipes. There are shared laundry facilities for all tenants to use in the building. Further to this the building's hot water supply is not big enough to accommodate washers and dryers in individual units.

KS testified that with regard to the additional occupants; during an inspection of the tenant's unit there were at least 10 beds found in her unit. Other tenants have complained about these additional occupants being at her unit and they have been noticed on the balcony smoking and chatting.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After consideration of the above, I find there is sufficient evidence to prove at least one of the reasons on the One Month Notice. The landlord's evidence clearly shows the tenant has been late with her rent on at least 11 occasions and as the tenant has the responsibility to ensure rent is paid on the day it is due then the tenant must ensure it is paid by one means or another. Accordingly, I am not required to deal with any of the other reasons provided on the Notice and I find the tenant's application to dispute the One Month Notice is dismissed.

I therefore refer the parties to s. 55(1) of the Act that provides the following:

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.

I find the landlord's Notice to End Tenancy does comply with s. 52 of the *Act* and the landlord requested that I uphold the Notice and issue an Order of Possession for the rental unit. The effective date of the One Month Notice is February 28, 2017; and this date has since passed. As I have dismissed the tenant's application I therefore issue an Order of Possession to the landlord.

Conclusion

The tenant's application for an Order to cancel the Notice to End Tenancy dated January 26, 2017 is dismissed.

The tenant is at liberty to file a new application for money owed or compensation for damage or loss under the *Act* and for an Order to reduce rent due to repairs, services or facilities agreed upon but not provided.

The landlord has been issued an Order of Possession effective **at 1.00 p.m. on March 31, 2017** pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: March 01, 2017

Residential Tenancy Branch

