Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MATARA INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, OPB, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant's Application is seeking an order to cancel a 1 Month Notice to End Tenancy for cause, to request emergency repairs to the rental unit and to recover the filing fee for the Application.

The Landlord filed a claim for an order of possession based on a 1 Month Notice to End Tenancy for cause, alleging an unpaid pet damage deposit, for alleged damages to the rental unit, for allegedly putting the Landlord's property at significant risk, for failing to make required repairs to the rental unit, for breach of a material term of the tenancy agreement, for assigning or subletting the rental unit without the Landlord's prior written consent (the "Notice to End Tenancy") and to recover the filing fee for the Application.

At the outset of the hearing I explained the process of the hearing and explained that it was open to both parties to come to a mutual agreement regarding the tenancy dispute during the hearing. Both parties were present, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. Neither party raised issues with the exchange of evidence.

Both parties provided a significant amount of evidence about the many issues that were involved in the dispute. 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

At the outset of the hearing I explained that not all the matters requested by the parties in their Applications could be dealt with during the course of the hearing. I found that not all the claims being made were sufficiently related to the main issue, which was possession of the rental unit and the disposition of the tenancy, to be dealt with together. For disputes to be combined on cross applications they must be related. Therefore, pursuant to section 2.3 of the rules of procedure, I will only deal with the Notice to End Tenancy for cause, and I dismiss the unrelated portions of both Applications with liberty to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled or is the Landlord entitled to an order of possession?

Background and Evidence

Based on the testimony of both parties, I find that the Tenant was personally served with the Notice to End Tenancy for the causes described above on March 28, 2017. The Tenant disputed the Notice to End Tenancy on time by filing his Application for Dispute Resolution within the required time, on March 31, 2017.

This tenancy began in 2012, when the Tenant's former partner entered into a tenancy agreement with the Landlord. At the outset of the tenancy the Tenant and his pet dog came to live with his partner and the tenancy agreement was modified to include the Tenant. The Tenant and his former partner moved into a larger rental unit in or about 2013, which is the subject rental unit before me. Subsequently the Tenant's partner left the tenancy, and her portion of the security deposit was paid out to her. Since that time the Tenant has continued with tenancy agreements with the Landlord in his own name.

In the Applications and evidence of both parties there are many disputes outlined, including too many guests and roommates being allowed in the rental unit by the Tenant, damages being done to the rental unit by the Tenant or repairs not being repaired by the Landlord, the costs of pest control incurred by the Landlord due to the Tenant's guest having a pet, and that the Landlord now does not want the Tenant to have a roommate to supplement the rent when the Landlord had allowed this to occur before. However, I note that the main issue dealt with during the hearing was the pet damage deposit.

The parties agree that the Tenant has had a dog in the rental unit since the outset. At some point the Tenant also acquired a second pet, a medium sized lizard, which was not disclosed to the Landlord by the Tenant and only came to the attention of the Landlord during a recent inspection for repairs.

At the outset of the tenancy relationship the Landlord required the Tenant to pay a pet damage deposit of $300.00. In evidence before me the Landlord has provided a copy of the cheque provided by the Tenant dated July 12, 2012, which has a stamp across it from the financial institution indicating “ITEM DISHONOURED”.

The Agent for the Landlord who had the most contact with the Tenant (“L.S.”) testified and submitted in evidence that she had requested the pet damage deposit be paid by the Tenant several times.

The Tenant testified that he was not aware that the pet damage deposit had not been paid until he saw this on the Notice to End Tenancy, on or about two days after being served with it, which appears to have been approximately March 31 2017, when it came to his attention. I find that the Tenant was aware of the pet damage deposit not being paid at the time he filed his Application on March 31, 2017, as he has listed this issue in the particulars of his Application.

The Tenant testified that his bank told him that this amount had been reversed due to a security issue involving a forgery. He testified that the cheque had not bounced. Nevertheless, the Tenant agreed that the pet damage deposit had not been paid to the Landlord and he had not issued a new cheque to replace the dishonoured item.

The Tenant testified that he spoke with L.S. at the end of March or early in April of 2017, and informed her he would pay the pet damage deposit when his income tax return came in or, “… when he was paid on Friday.”

The Tenant testified that the issue of the pet damage deposit did not come up until after he had requested repairs to be made to the pantry wall in the rental unit. I note that the parties were in also in a dispute about who caused the damage to this pantry wall, and whether or not there was mold in the wall in the pantry.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant has breached a material term of the tenancy agreement by failing to pay the pet damage deposit. I find that the Tenant was under an ongoing obligation from the very outset of the tenancy to provide the Landlord with the pet damage deposit and has failed to do so, in breach of the ongoing agreements they had entered into. I find that the parties carried forward many of the terms of the tenancy agreement that were entered into at the outset of the tenancy. For example, the original security deposit paid by the Tenant was carried forward in subsequent agreements. I find the Tenant has failed to pay the pet damage deposit despite having received notice from the Landlord that he was required to pay the pet damage deposit as recently as March 28, 2017, when he was served with the Notice to End Tenancy.

As to the Landlord reminding the Tenant he had to pay the pet damage deposit, I found that the Tenant lacked credibility on the issue of the payment and dishonoured cheque for the pet damage deposit. He provided insufficient evidence to support that his bank had reversed the payment of the pet damage deposit due to a security issue which ultimately caused the cheque to be dishonoured by the financial institution. It was clear in the tenancy agreement signed on June 25, 2012, that the Tenant provided the Landlord with a post-dated cheque for the amount of the pet deposit. This is the cheque hat was not honoured by the Tenant's financial institution. It was agreed by the parties that the Landlord had never received the pet damage deposit or a replacement cheque from the Tenant, regardless of any reversal by the bank. I find the Tenant was always responsible to make good this debt to the Landlord and failed to do so. It was a material term of the agreement between the parties that a pet damage deposit must be paid.

I found the Tenant's evidence on the issue of the cheque not being honoured to be vague to the point of bringing into question his credibility. For this reason I preferred the evidence of the Landlord that the Tenant had been reminded to pay this pet damage deposit on previous occasions and failed to do so. The Landlord submitted that he always had an excuse about why it was not paid. The evidence submitted by the Landlord further indicates that the Tenant was having ongoing issues paying the rent by himself and was seeking roommates to help him with the rent. He had stated in social media he was going to have to give notice to end the tenancy because he could not afford to pay the rent. He had informed the Agent for the Landlord he would pay the pet

damage deposit when his income tax refund arrived or when he was paid on Friday; however, some five weeks after his Application had been filed (at the time of this hearing), the pet damage deposit had still not been paid. For these reasons I find it is more likely than not that the Tenant simply did not have the funds required to pay the Landlord the pet damage deposit or simply did not want to pay the Landlord the amount owed although it had been outstanding for some time and was owed to the Landlord. I find this failure to pay the pet damage deposit to be a breach of a material term.

Therefore, I dismiss the Application of the Tenant and I allow the Application of the Landlord. With the agreement of the Landlord as to the date of the end of the tenancy, I grant the Landlord an order of possession effective at **1:00 p.m. on May 31, 2017**. The Tenant must be served with the order of possession and it may be enforced through the Supreme Court of British Columbia, at the expense of the Tenant.

I also note that the Landlord had included in their Application a monetary worksheet for compensation for alleged damages to the rental unit. The Tenant also claimed during the hearing that the alleged damages to the rental unit were not his fault and the Landlord had failed to make required repairs. I explained to the Landlord and the Tenant that these claims are premature, as the Tenant has a right under the Act to make repairs he might be responsible for up to the end of the tenancy. I encouraged the parties to try and reach an agreement regarding the repairs prior to the end of the tenancy. I also explained to the parties that if they could not come to an agreement as to who was responsible for the repairs, or what the cost of repairs should be, they could file new applications for dispute resolution.

I note I have made no determinations on the issue of repairs at the rental unit, or the other issues that are in dispute between the parties.

I also explained that should further applications be filed by either party that they would have to submit new evidence or resubmit the same evidence submitted in these present applications for any new applications, as the evidence they submitted for the applications before me would <u>not</u> be brought forward to any new applications.

Lastly, as the Landlord has been successful in their Application, I allow and order that the Landlord may retain **$100.00** from the Tenant's security deposit in compensation for the filing fee for the Application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 04, 2017

Residential Tenancy Branch