Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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 of the *Act*.

The landlord's agent, KH ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. IJ ('tenant'), agent testified on behalf of the tenant in this hearing, and was given full authority to do so by the tenant. Both parties 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 confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's' evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The landlord's agent testified that the tenant was served with the 1 Month Notice on April 4, 2017 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* on April 7, 2017, three days after posting.

Issues

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 monetary compensation for loss or other money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recovery of the filing fee for this application from the landlord?

Background and Evidence

This fixed-term tenancy began on November 1, 2016, with monthly rent currently set at $2,350.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of $1,175.00. The tenant is a company that sublets to their clients. The written tenancy agreement was initialed by both parties indicating that "subleasing is allowed".

The landlord submitted the notice to end tenancy providing the following grounds:

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

The landlord testified that that the strata had received multiple complaints regarding the occupants of the suite sublet by the tenant. The landlord testified that this was the second 1 Month Notice issued, as the first one was cancelled after the tenant had agreed to speak to their tenants.

This second 1 Month Notice was issued following two incidents where the fire alarm went off in the suite, on February 10, 2017, and on March 16, 2017, as noted on the 1 Month Notice. The landlord testified that the fire department was dispatched on these two occasions, resulting in fines for the strata from the fire department. These fines of $369.60 for each incident were charged back to the tenant. The first incident resulted in a "notice of violation" from the Vancouver Fire Department as an occupant of the suite had left the hallway door propped open, and the fire department discovered the in-suite smoke sensor to be turned off by a male occupant as It was making a lot of noise. The hallway smoke alarm was activated due to the open door and smoke caused by the

tenants' cooking. The landlord testified that a similar incident happened again in March of 2017. In support of their testimony, the landlord submitted email correspondence as well as well as invoices, and letters of complaint from other occupants in the building. The landlord submitted an email complaint dated January 24, 2017 from another resident regarding an overdose, and loud parties past 3:00 A.M. The landlord testified that there was an incident in March 2017 when the tenants had caused a flood in their unit, and in turn the unit below.

The landlord testified that the tenants had damaged the front doors of the building, and the strata had put pressure on the landlord to end the tenancy. The landlord testified that the building consists of only nine units, and is an older building with no sprinkler system. The landlord submitted that the behaviour of occupants who have sublet from the tenant has put the property at significant risk, and has been warned on more than one occasion regarding this.

IJ, agent for the tenant, did not dispute the fact that their tenants in the past have caused issues for the landlord and the strata. IJ testified that two of the four tenants have vacated the suite on their own, and that different tenants reside there now. IJ testified that a meeting had just taken place in April 2017 to address these issues. IJ also testified that the overdose was in fact a tenant becoming ill from bad cigarettes, and not a drug-related issue. IJ submitted that this tenant is now gone, and no longer residing in the unit.

IJ testified that the tenant disputes the March 2017 fire alarm incident, as the landlord wrongfully attributed this incident to the wrong building. No invoice was submitted by either party for this incident. The tenant included in evidence an invoice dated January 9, 2017 for $369.60 pertaining to a different address. The landlord acknowledged in the hearing that the tenant was correct, and replied that an adjustment of $389.62 would be applied to the tenant's account as they are only pursuing the matter from February 2017. IJ did not dispute that the alarm was activated in February 2017, but testified that the incident was due to a damaged heat sensor, and is no fault of the tenants. An invoice dated February 28, 2017 was submitted by both parties for $369.60 pertaining to the tenant's suite. The tenant provided a receipt for a payment made on March 31, 2017 for $739.20. As the landlord had refunded $369.60, the tenant is requesting a monetary order for $369.60 as a refund for the February 2017 incident, plus the $100.00 filing fee.

Analysis

Section 55(1) of the *Act* reads as follows:

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.

Based on the testimony of the landlord and the tenant, 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.*

Section 46 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 filed their application on April 18, 2017. I find that the tenant has failed to file their 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 corrected effective date of the 1 Month Notice, May 31, 2017.

In this case, this required the tenant and anyone on the premises to vacate the premises by May 31, 2017. As this has not occurred and that date has passed without a surrender of the rental unit to the landlord, 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*.

The tenant submitted a monetary claim for $739.20 for reimbursement of the fines imposed on them during this tenancy. The landlord acknowledged that one of the fines was imposed in error, and had testified in the hearing that $369.60 was already refunded to the tenant in May 2017. The tenant testified that the remaining $369.60 was imposed on them even though there were issues with the alarm. I have considered the testimony and evidence submitted by both parties, and I find that the tenant did not provide sufficient evidence to support that the February 2017 invoice was issued in error. Accordingly the tenant’s monetary application is dismissed.

I dismiss the tenant’s application for recovery of the filing fee.

Conclusion

I dismiss the tenant's entire application for dispute resolution.

I find that the landlord's 1 Month is valid and effective as of May 31, 2017. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 23, 2017

Residential Tenancy Branch