



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC

Introduction

This hearing was convened to deal with cross-applications under the *Residential Tenancy Act* (the “Act”) based in part on a 1 Month Notice to End Tenancy for Cause dated May 31, 2017 (the “1 Month Notice”).

The landlords applied for an order of possession based on the 1 Month Notice.

The tenant applied to cancel the 1 Month Notice and for orders requiring the landlords to allow access to the unit and comply with the Act, regulations or tenancy agreement. The tenant also sought authorization to change the locks in the rental unit and to reduce the rent for repairs or services agreed upon but not provided. Lastly, the tenant sought to dispute a rent increase and to recover the application filing fee.

Both of the landlords and the tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to call witnesses.

At the outset of the hearing I advised the parties that I would be severing the tenant’s application to cancel the 1 Month Notice from the tenant’s other applications. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. Here, the tenant seeks several different orders, the most urgent of which is an order setting aside the 1 Month Notice. The other orders sought are not so related to the question of whether or not the tenancy will continue to require determination during these proceedings. Accordingly, I dismiss the balance of the tenant’s application, with leave to re-apply.

Service of the parties’ respective applications and notices of hearing was not at issue. The tenant also confirmed having received the landlord’s evidence, although she said that her computer was compromised so that she could not review the digital evidence. The tenant stated that she had faxed and emailed evidence to the Residential Tenancy Branch but that evidence was not before me. The tenant advised that she did not serve the landlord with her evidence because she was not aware she was required to do so.

The tenant did not seek an adjournment on this basis until the end of the hearing, at which point I declined an adjournment. Rule 7.9 of the Rules of Procedure sets out some of the considerations relevant to whether an adjournment is appropriate. Here, I conclude that the tenant has neglected to submit her evidence and to serve it on the other party as required. More significantly, I do not consider that the adjournment is required to provide the tenant a fair opportunity to be heard, as the matter will be decided based the timing of the tenant's application and not on the more substantive question of cause.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the landlord entitled to an order of possession?

Is the tenant entitled to recover the application filing fee?

Background and Evidence

There was no written tenancy agreement in evidence. The landlords advised that it had been lost. It was agreed that the tenancy began in July of 2015. This is a month to month tenancy. Monthly rent is \$650.00 and is due on the first of the month. A security deposit of \$300.00 was paid at the beginning of the tenancy and remains in the landlords' possession.

It was also agreed that the landlords served the tenant with the 1 Month Notice on May 31 by posting it on her door. The tenant advised that she received the 1 Month Notice on May 31. The tenant's application to dispute the 1 Month Notice was filed on June 13, 2017. The tenant did not apply for additional time in which to file her application and stated that she had been required to rely on a social worker to file, and that her computer was not working.

The 1 Month Notice states:

When we rented this place, it was made clear to the tenant . . . that this place is rented to non-smoker(s) only. Very unpleasant smoke smell comes from time to time from the basement suite (where the tenant lives) and spread all over the house causing nausea and dizziness to me and my family including my little kids. We have informed the tenant . . . many times but it has not stopped. . . [Reproduced as written]

The landlords both testified that the tenant appears to smoke inside as well as outside of her suite and both described how the smell affects their family. They also submitted two notes from a doctor indicating that two of their family members cannot tolerate smoke, two letters from friends indicating

that they have noticed the smell on multiple occasions, and video clips of the tenant smoking outside of the unit many times throughout the day.

As set out above, there was no documentary evidence from the tenant before me. The tenant simply said that she does not smoke inside of the unit. She advised that a witness who would say she did not smoke inside of the unit could be called, but she did not know if he would answer his phone and she did not arrange in advance for him to attend by conference call. She also said that he was not at her home very often.

The tenant did not recall what the written tenancy agreement said about smoking or what was discussed orally about smoking when the agreement was signed. She also said she was not smoking much at that time that the agreement was signed, and that she did not understand why her smoking has become an issue after two years.

The tenant did not disagree with the landlord's testimony that he has cautioned her about smoking on many occasions.

Analysis

Section 47 of the Act allows a landlord to end a month to month tenancy for cause.

Section 47(4) allows a tenant to apply to dispute such a notice within 10 days of receipt and s. 47(5) says that if a tenant does not file an application to dispute within 10 days, the tenant is conclusively deemed to have accepted that the tenancy ends on the effective date of the 1 Month Notice, and must vacate by that date.

The tenant has not applied to dispute the 1 Month Notice within 10 days, and has not applied for an extension of time in which to do so. Nor has the tenant offered a compelling reason for an extension of the deadline. There is no evidence that a social worker filed the application on behalf of the tenant and the tenant did not give any additional detail about the circumstances requiring her to rely on a social worker. Nor is the evidence that the tenant relied on a social worker consistent with her statement that her computer was not functioning. I also note that a broken computer is not a reason to extend an application deadline.

The landlords' 1 Month Notice is upheld because the tenant did not file to dispute in time. This tenancy ended on June 30, 2017, the effective date of the 1 Month Notice. The 1 Month Notice complies with s. 52. As the tenant has paid rent for August, I grant the landlords an order of possession effective at 1:00 pm on August 31, 2017.

As set out above, I heard the parties' evidence on the cause alleged in the 1 Month Notice. If this tenancy had not ended as a result of the tenant's failure to file her application within 10 days of receiving the 1 Month Notice, it would have ended for cause. This is because the tenant could not confirm that smoking is allowed in or around the unit, and because I accept the landlords' evidence that the tenant's smoking constitutes a nuisance to the landlords' family and is seriously jeopardizing their lawful rights.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

As the tenant's application was not successful she is not entitled to recover the application filing fee from the landlords.

The landlords' application for an order of possession based on the 1 Month Notice is allowed.

I grant an order of possession to the landlords effective at **1:00 pm on August 31, 2017**. Should the tenant or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The balance of the tenant's application is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 17, 2017

Residential Tenancy Branch