



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, MNSD, OPN,

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenant applied for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

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 confirmed that the tenant's dispute resolution hearing package sent by the tenant by registered mail on June 30, 2017 was received by the landlord. I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

Pursuant to section 88 of the *Act*, I find that the landlord was duly served with the tenant's seven pages of written evidence and that the tenant was duly served with a 23-page written evidence package from the landlord. As the landlord could not confirm when or how he provided a lengthier written evidence package to the tenant, I have not considered this evidence.

The landlord could not confirm when or how copies of the landlord's original application for dispute resolution or a subsequent amendment to that application was provided to the tenant. Neither the tenant nor his advocate were aware of the landlord's application which the landlord had attempted to have heard at the same time as the tenant's

application. Part of the landlord's application was to seek an Order of Possession for Cause, based on the same 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) that the tenant was seeking to cancel. As the tenant and his advocate clearly knew that the landlord had been attempting to end this tenancy for cause, I advised the parties that I saw no prejudice to considering the landlord's application for an Order of Possession properly before me. I have not considered the remainder of the landlord's application as it was both premature and the landlord could not adequately demonstrate service of the amendment.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy commenced as a periodic tenancy on August 15, 2015. Monthly rent is set at \$375.00, payable on the first of each month, plus \$20.00 in Cablevision. The landlord continues to hold the tenant's \$187.50 security deposit paid on August 15, 2015.

The landlord's 1 Month Notice identified the following three issues as grounds for ending this tenancy for cause:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*

Tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord...*

At the hearing, the landlord testified that he could not identify any specific "illegal activity" that the tenant had been involved in at the rental unit that would have given rise to the 1 Month Notice. The landlord's application narrowed to the first of the grounds cited above that were included in the landlord's 1 Month Notice.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Both parties confirmed that they were fully authorized to enter into these settlement discussions and enter into a final and binding resolution of this dispute and issues arising out of this tenancy. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of all issues arising out of these applications and this tenancy at this time:

1. The landlord agreed to withdraw the existing 1 Month Notice to End Tenancy.
2. Both parties agreed that this tenancy will end by March 1, 2018, by which time the tenant agreed to have vacated the rental unit.
3. The landlord agreed to accept any written notice to end tenancy from the tenant that would end the tenancy prior to March 1, 2018.
4. The landlord agreed to waive any funds owing as a result of an otherwise late notice to end tenancy issued by the tenant prior to March 1, 2018.
5. The landlord agreed to return the tenant's security deposit in accordance with the *Act*.
6. Both parties agreed that should issues arise during the remainder of this tenancy that the parties would arrange for a private meeting to discuss these concerns along with representatives with the C. Outreach Centre, the centre identified at the beginning of this decision.
7. Both parties agreed that the terms of settlement as outlined above were entered into free of coercion and of their own volition and that these terms constituted a final and binding resolution of all issues arising out of these applications and arising out of this tenancy at this time.

Conclusion

The landlord's 1 Month Notice is hereby cancelled with the effect that this tenancy continues until March 1, 2018, unless ended earlier in accordance with the *Act* or as outlined in Clause 3 of the above settlement agreement.

To give legal effect to Clause 2 of the settlement agreement outlined above and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant does not comply with the terms of their agreement **and** fails

to vacate the rental premises by March 1, 2018, in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with copies of these Orders in the event that the tenant does not vacate the premises in accordance with their agreement. 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.

The landlord's application relating to the security deposit is premature, so it is dismissed with leave to reapply.

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: September 07, 2017

Residential Tenancy Branch