



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC CNC PSF OLC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord acknowledged receipt of the tenant’s application for dispute resolution. The tenant testified he had not received the application.

The landlord testified that on August 8, 2017 a copy of its Application for Dispute Resolution was sent to the tenant by registered mail. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the tenant is deemed served with the landlord’s Application for Dispute Resolution pursuant to sections 89 & 90 of the Act. No issues were raised with respect to service of the evidence on file.

Issues

Should the 1 Month Notice be cancelled? If no, is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover its filing fee?

If the tenancy is continuing, should the landlord be ordered to comply with the Act and provide services or facilities required under the Act?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy began in May 2009 with a current monthly rent of \$1745.00 payable on the 1st day of each month. The tenant paid a security deposit of \$825.00 at the start of the tenancy which the landlord continues to hold. The rental unit is the upstairs portion of a residential house. There is also a secondary ground level suite occupied by other tenants.

The landlord served the tenant with a 1 Month Notice on July 4, 2017 by registered mail. The tenant refused the original Notice and the landlord subsequently issued another 1 Month Notice dated July 7, 2017 to the door of the rental unit. The grounds for issuing the Notice were that the tenant put the landlord's property at significant risk and breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The tenant's application to dispute the 1 Month Notice was filed within the time period required under the Act.

The landlord's agent testified that he took over as the property manager on June 5, 2017. He met with the tenant on this date. The tenant had previously received a 1 month caution notice from the landlord. The 1 month caution notice was dated April 6, 2017. The notice required the tenant to clear the backyard, walkways and property of wood and garbage bags that were piling up on the property. The tenant was notified that this was not a storage area for building materials or garbage. The tenant was put on notice that if the materials are not stored and cleaned up by April 30, 2017, an official eviction notice would be issued. During the meeting on June 5, 2017 the tenant was issued another caution notice by the property manager. The tenant was advised he had until June 30, 2017 to remove all material from the side of the house and in the carport and parking areas. The tenant signed a periodic inspection report agreeing to clean up the areas outside the house. The landlord submitted various pictures of items and

garbage strewn around the property. The landlord submits the tenant failed to clean up the property by July 1, 2017 and a 1 Month Notice was subsequently issued.

The tenant testified that he originally thought the 3 weeks' notice he received would be sufficient to get the property cleaned up. However, he was storing materials from someone's coffee shop at that person wasn't available to give him a hand in removing the items. The tenant submits that he took an additional 2 weeks past the June 30, 2017 deadline date to get the areas cleaned up.

The landlord's agent testified that he does not have any evidence that the outside areas have since been cleaned up.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

I accept the landlord's testimony and evidence and find that the tenant breached a material term of the tenancy by failing to keep the property clear from garbage and clutter. The tenant was provided with two cautionary notices to clean up the property and the final notice provided him with 25 days which I find is a reasonable period of time to rectify the problem. The tenant was also put on notice that a failure to clean up the property before the deadline would result in the issuance of a Notice to End Tenancy. The tenant has not provided any evidence in support of his testimony that the outside areas were cleaned up two weeks after the deadline date of June 30, 2017. In either event, I find even if the tenant did clean up the property, it was not done until after the issuance of the 1 Month Notice so the Notice would still stand.

I find the landlord had cause to end the tenancy as per the 1 Month Notice. The 1 Month Notice complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the security deposit.

The tenant's application is dismissed in its entirety and the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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: September 29, 2017

Residential Tenancy Branch