



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, CNC, OLC, FF,

Introduction

This hearing dealt with applications from both the corporate landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The tenant named the personal landlord in her application:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The corporate landlord applied for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent CK (the "landlord") primarily gave testimony for the landlord.

The tenant provided the incorrect dispute address in her application for dispute resolution. The tenant could not explain why she had listed an address that she does not and has never resided in as the dispute address. Eventually, she confirmed that it was a mistake and amended her application to provide the address on the first page of this decision.

As both parties were in attendance I attempted to confirm service. The tenant confirmed receipt of the landlord's 1 Month Notice dated July 24, 2017 by registered mail. The landlord testified that the 1 Month Notice was sent by registered mail on July 24, 2017 and provided a Canada Post tracking number as evidence of service. I find that the 1 Month Notice was deemed served on the tenant in accordance with section 88 and 90 of the Act on July 29, 2017, five days after mailing.

The tenant testified that she filed her application for dispute resolution on August 8, 2017. She subsequently filed an amendment to the application on August 28, 2017. The tenant said that she did not serve any materials on the landlord until October 9, 2017, one day prior to the hearing. The landlord confirmed receipt of the tenant's application and amendment. Pursuant to sections 89 and 71 of the Act, I find that the tenant's application materials were sufficiently served on the landlord on October 9, 2017.

The landlord testified that the landlord's application for dispute resolution dated August 28, 2017 and evidence materials were served on the tenant by registered mail sent on September 21, 2017. The landlord provided a copy of the Canada Post tracking number as evidence of service. I find that the landlord's application and evidence were deemed served in accordance with sections 89 and 90 of the Act on September 26, 2017, five days after mailing.

Issue(s) to be Decided

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

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is either party entitled to recover the filing fee of this application from the other party?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

This periodic tenancy began in 2015. The landlord said that throughout the tenancy the tenant has been uncooperative in allowing the landlord and tradespeople hired by the landlord access to the rental unit to perform maintenance work and fire safety inspections. The landlord submitted into written evidence copies of text message correspondence with the tenant attempting to schedule inspections at various times throughout the tenancy. The landlord testified that the tenant has often been antagonistic and abrasive. The landlord submitted into written evidence copies of incident notes and a letter from a maintenance worker reporting on the tenant's behavior. The landlord said that the tenant's refusal to allow entrance to the rental unit despite notice being given in accordance with the Act, means that repairs and upgrades cannot be performed and endangers the whole rental building.

The tenant disputed the landlord's evidence generally. The tenant questioned the identity of the landlord's agent CK and her knowledge of the tenancy. The tenant said that maintenance workers hired by the landlord are not professionals in their field. The tenant characterized herself as the victim of bullying by the landlord. She said that she has had personal losses which have increased the stress she feels in dealing with the tenancy. The tenant denied that she has refused to allow the landlord or her agents access to the rental unit. She said that because of her work schedule she is sometimes forced to cancel or reschedule appointments.

The tenant said that the landlord has previously issued 1 Month Notices which have subsequently been retracted. She denies that her behavior and condition of the rental unit constitutes a serious jeopardy to the health and safety of others or to the lawful right of others.

Analysis

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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

I find that on a balance of probabilities the landlord has shown that there is cause to end this tenancy. I accept the landlord's evidence that the tenant has refused access to the rental unit on numerous occasions preventing building maintenance and safety inspections. The landlord submitted into written evidence a letter from the plumber who attended at the rental building saying that the tenant "came out screaming". The landlord submitted into written evidence notes of incidents where the tenant has shouted profanity at her while the landlord was performing her duties. I accept the landlord's evidence that the tenant has interfered with the landlord's lawful right to manage the rental building and has caused jeopardy to the safety of the building through her refusal to cooperate with inspections and maintenance. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenant's application.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice also provides the reason for ending the tenancy.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed I issue an Order of Possession effective two (2) days after service.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant 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 tenant's application is dismissed without leave to reapply.

I issue a monetary award in the landlord's favour in the amount of \$100.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 10, 2017

Residential Tenancy Branch