



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

DZ appeared as agent for the landlord, and had full authority to do so. 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 receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find the tenant duly served with the landlord's evidence. The tenant did not submit any written evidence for this hearing.

The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause, with an effective date of August 31, 2017(the 1 Month Notice), on July 26, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

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?

Background and Evidence

This tenancy began on December 1, 2016 as a fixed-term tenancy, which was to end on February 1, 2017, with monthly rent currently set at \$500.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of \$250.00. The tenant currently still resides in the suite. Both parties testified and agreed in the hearing that despite the fact that the tenancy agreement stated that at the end of

the fixed term tenancy on February 1, 2017, “the tenancy ends and the tenant must move out of the residential unit”, both the landlord and tenant continued the tenancy on a month-to-month basis, and no new written tenancy agreement was signed. A copy of the written tenancy agreement was submitted in the landlord’s evidence.

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

“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

The landlord’s agent, DZ, testified that the tenant had breached a material term of the tenancy agreement by keeping a pet rat in his suite, contrary to the “no pet” policy, and despite the fact that the tenant had received at least one written warning that the landlord could issue the tenant a notice to end tenancy if the tenant did not address the matter. The landlord submitted a “notice to tenant” dated May 17, 2017 about the tenant’s rat.

The tenant does not dispute that fact that he was in possession of a rat in his unit, but testified that he was not the owner, but was simply caring for the rat.

Analysis

The definitions of a “tenancy”, “rental unit”, and a “tenancy agreement” are outlined in the following terms in section 1 of the *Act*.

“tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement;

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

"rental unit" means living accommodation rented or intended to be rented to a tenant;

Both parties gave evidence that although the fixed term tenancy ended on February 1, 2017, the tenant remained in the unit, and the landlord continued to accept monthly rent in exchange for the tenant’s right to reside in the unit. The landlord did not make any applications to end the tenancy, nor did sign any new tenancy agreements. As a tenancy agreement may be written, or oral, express or implied, I find that the

acceptance of monthly rent, after the fixed-term tenancy had ended, implied that the tenancy continued on a month-to-month basis.

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 both parties, 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*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The tenant failed to make his application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to take the above actions within ten days led to the end of this tenancy on August 31, 2017, the effective date on the 1 Month Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by August 31, 2017. As this has not occurred, 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 landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As this tenancy has effectively come to an end, the tenant and any occupants on the premises are required to vacate the rental suite.

Conclusion

I dismiss the tenant's application for dispute resolution.

I find that the landlord's 1 Month is valid and effective as of August 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: October 30, 2017

Residential Tenancy Branch