



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that Section 55 of the *Act* requires that when a tenant submits an application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s sister and the agent for the Landlord (the “Agent”); all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing and I confirmed service of the documents as explained below.

The Tenant testified in the hearing that the Application and the Notice of Hearing were personally served on the Landlord on August 26, 2017, and the Landlord confirmed receipt of these documents on that date. As a result, I find that the Landlord was personally served on August 26, 2017.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

In the hearing the Agent testified that starting May 1, 2011, the Tenant entered into a verbal month to month tenancy agreement with the Landlord to rent a 1 bedroom home, approximately 500 square feet in size. The Agent stated that the home is very small and that as a result, the agreement was for the Tenant to be the sole occupant of the unit. The Agent acknowledged that at some point after the Tenant moved in, the Tenant requested permission for her mother to move into the rental unit with her, and that the request was granted on the basis that no further occupants would be allowed to live in the unit. All parties agreed that these were the correct terms of the tenancy.

In the hearing the Landlord testified that since that time, the Tenant's sister has moved in, and the Tenant's brother and the sister's boyfriend also frequent the property to stay over or to shower and use the kitchen and washroom. As a result, the Agent testified that a One Month Notice was issued.

The One Month Notice dated August 18, 2017, has an effective vacancy date of September 30, 2017, and indicates the reason for ending the tenancy is that the Tenant had allowed an unreasonable number of occupants in the rental unit.

In the hearing the Agent testified that the number of occupants in the home is unreasonable given the extremely small size of the unit and the unreasonable wear and tear the additional occupants are putting on the water and septic systems. The Landlord stated that the large number of Tenants occupying the space makes it unsafe as there are an unreasonable number of possessions in the unit.

The Agent submitted a letter from another tenant on the property in support of their assertion that the Tenant's sister resides in the unit and that the Tenant's brother and

the Tenant's sister's boyfriend also stay there very frequently. The Agent also stated that the sister obtains her mail at the unit, and keeps a pet there. The Agent testified that the Tenant has been given previous warnings that they will be evicted if the other occupants do not move out, however, the additional occupants always move out for a short time and then return.

In the hearing the Tenant testified that they share the 1 bedroom home with her mother, who sleeps in the bedroom, and that they have a mattress on the floor of the main living space. The Tenant testified that her sister is homeless and resides with them when she cannot stay in a transition house or a homeless shelter.

Both the Tenant and the Tenant's sister acknowledged that the sister stays in the unit at least two weeks out of every month and sleeps on the couch. The Tenant also acknowledged that her brother, who is also homeless, attends the property at least twice a week to shower, use the washroom, and eat. However, the Tenant testified that her brother does not sleep there.

Analysis

Section 47 of *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit;

Based on the oral testimony and the documentary evidence before me, I am satisfied that the Tenant's sister resides in the rental unit. Although the Tenant stated that her sister only resides in the rental unit two weeks out of every month, both the Tenant and her sister acknowledged that she does not have another fixed address, that she stays there when she cannot stay in a shelter or transition house, that she receives her mail at the property, and that she keeps her belongings and a pet there. As a result, I find it reasonable to conclude that the Tenant's sister is an occupant and resides in the property.

Further to this, while I find that the Tenant's brother does not necessarily reside in the property, he none the less frequents the property to make use of the bathroom and kitchen facilities.

Given the small size of the rental property and the wear and tear the increased number of occupants has on the septic system, I find it reasonable to conclude that in this circumstance, there are an unreasonable number of occupants in the rental unit. As a result, I find the landlord has established sufficient cause, pursuant to Section 47 of the

Act, to end the tenancy and the Tenant's Application to cancel the One Month Notice is dismissed.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession. As the effective date of the One Month Notice has passed, the Order of Possession will be effective two days after service of the Order on the Tenant.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 Supreme Court of British Columbia 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 3, 2017

Residential Tenancy Branch