



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated September 26, 2017

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was served on the Tenant by posting on September 26, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served in early October. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated September 26, 2017?

Background and Evidence:

On June 21, 2010 the parties entered into a written tenancy agreement that provided that the tenancy would start on July 1, 2010. The tenancy agreement provided that the tenant(s) would pay rent of \$963 per month payable in advance on the first day of each month. The present rent is \$1085. The tenant(s) paid a security deposit of \$481.50 at the start of the tenancy.

The tenancy agreement provided that the only occupants of the rental unit would be the NK and VK and their two dependents unless the landlord agreed in writing that the new occupant could become a permanent resident. VK subsequently vacated the rental

unit. Paragraph 7 of the tenancy agreement provides that only the persons listed in the occupancy clause above shall be the permanent occupants and that anyone staying longer than 14 days would be deemed to be a permanent occupant. "Such additional permanent occupant is not acceptable to the Landlord unless permission is given in writing. Breach of this clause is grounds for eviction." The landlord testified this clause is material as the landlord is a non profit society and rent is related to income.

In January 2017 the landlord became aware a boyfriend had moved in with the tenant and the landlord advised the Tenant that they could not just add the boyfriend to the tenancy agreement but this he would need to complete an application form and his references would have to be checked. An Application form was posted to the tenant's door.

In July 2017 the landlord left a message for the tenant asking for an update and indicating the Application form had not been filled out.

On August 28, 2017 a warning letter was posted to the Tenant's door that demanded that the Tenant provide a completed copy of the housing application no later than September 11, 2017. It set out the provision of the tenancy agreement referred to above and stating that if the paperwork was not provided that a one month Notice to End Tenancy may be issued.

On September 11, 2017 the tenant's boyfriend dropped off an application at the front desk. The application was incomplete and the landlord delivered a copy of that letter with her handwriting setting out in detail the portions that made it incomplete. That document was posted to tenant's door. She acknowledged receipt of it on September 12, 2017.

On September 18, 2017 the boyfriend left an abusive message for the landlord. The landlord returned the call and again he was belligerent with her. After further discussion the boyfriend agreed to meet with the landlord on September 20, 2017 so that they could go over the application. The boyfriend failed to attend the meeting.

On September 26, 2017 the landlord posted a one month Notice to End Tenancy.

The tenant filed an Application for Dispute Resolution seeking to cancel the one month Notice to End Tenancy.

She delivered the materials to the landlord on October 13, 2017. Included with the materials was a completed Application for Rent.

The tenant gave the following evidence:

- She filled out an Application for Rent which included her boyfriend in January 2017 and gave it to the landlord.
- A second Application for Rent was given to the landlord on September 12, 2017.
- Her work often takes her out of town. Her busiest time is between August and November. She did not receive many of the communications that were given by the landlord.
- She acknowledged receiving the letter from the landlord where she handwrote the problems with the application on September 12, 2017.
- The landlord dealt with her boyfriend. Since she was the tenant the landlord should have communicated with her.
- Her boyfriend told her that the landlord and her boyfriend made arrangements that the landlord would pick up the third application to rent form as it was go by left on her door. She ensured the document was left there but the landlord failed to pick it up. .
- She has done all that is reasonably possible to complete and return the application to rent form.

The landlord responded testifying that she did not agree that she would pick up the application to rent form at the tenant's rental unit.

Grounds for Termination:

The Notice to End Tenancy identifies 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

Analysis:

I determined that the landlord has established sufficient cause to end the tenancy for the following reasons:

- I am satisfied the provisions of the tenancy agreement setting who can occupy the rental unit is a material term of the tenancy agreement. The tenancy provides a method for the changing of the occupants. The basis for this term is reasonable as rent is tied to income. The tenancy agreement provides that if the

tenant fails to get the written consent of the landlord the landlord can take steps to serve a one month Notice to End Tenancy to end the tenancy.

- I determined the letter of August 28, 2017 giving the tenant to September 11, 2017 to submit an application to rent form provides the tenant with a reasonable time to rectify the breach and thus complies with the Act.. The filling of the application to rent form could be completed in a short period of time. The Act provides that it is deemed received 3 days after posting.
- I do not consider the fact that the landlord gave the tenant an additional 2 weeks to provide the application for rent as fatal to the Notice to End Tenancy. The landlord was prepared to work with the Tenant but she and her boyfriend failed to do what was required.
- I do not accept the Tenant's explanation that the landlord agreed with her boyfriend that he could leave it posted to her door and the landlord would pick it up. The landlord denies this. The tenant's boyfriend did not testify or provide an affidavit for the hearing. Further, it was clear the landlord had not picked it up. I would have expected that the tenant would take steps to make sure the landlord got the completed form. I do not accept the submission of the Tenant that her work commitments prevented her from ensuring the landlord received what was required.

In summary I determined the tenant breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after receiving written notice to do so.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. The landlords stated that they were successful they would accept an Order of Possession effective March 31, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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: December 19, 2017

Residential Tenancy Branch