



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenant applied to cancel the notice to end tenancy for cause. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Does the landlord have cause to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Did the tenant dispute the notice in a timely manner?

Background and Evidence

The tenancy started on December 01, 2013. The rental unit is located on the third floor of a building that houses a total of 24 rental suites. The current monthly rent is \$905.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$400.00.

A copy of the tenancy agreement was filed into evidence. The tenant agreed that the tenancy agreement contained a no smoking clause. The tenant stated that she smokes the occasional cigarette on the balcony but denied smoking inside the rental unit.

The landlord stated that the tenant has a guest who visits on a regular basis and is a smoker. The landlord also stated that the smell of smoke emanates from the tenant's unit, into the common hallway.

After receiving several complaints from the other occupants of the building, regarding the smoking and noise creating activities of the tenant, the landlord served the tenant with four warning letters dated January 08, 2016, March 01, 2016, March 11, 2016 and September 21, 2016. The landlord filed copies of the complaints and the warning letters into evidence.

The landlord stated that she also gave the tenant several verbal warnings but the activity continued and therefore on September 29, 2017, the landlord served the tenant with a one month notice to end tenancy for cause. The tenant agreed to having received the notice on September 29, 2017 in person.

The notice to end tenancy alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice was given to do so.

Despite receiving the notice on September 29, 2017, the tenant completed her application to dispute the notice, on October 18, 2017. The tenant stated that she started the application within the legislated allowed timeframe of ten days but could not complete the application because she did not have access to a computer.

The landlord testified that despite receiving a notice to end tenancy for cause, the tenant did not change her behaviour and the odour of cigarette smoke continued to emanate from the rental suite. The landlord stated that a fire and safety inspection of the suite was conducted on October 23, 2017 and the technician reported the smell of cigarette smoke inside the unit. The landlord conducted a suite inspection on November 01, 2017 and confirmed that the odour of cigarette smoke was prevalent inside the unit.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for cause on September 29, 2017. The tenant's application to dispute the notice is dated October 18, 2017, a full 19 days after receiving the notice.

Section 47(5) of the Act provides that tenants have 10 days in which to dispute a one month notice to end tenancy, failing which they are conclusively presumed to have accepted the end of the tenancy.

As per the audit notes on the tenant's file, on October 18, 2017, the tenant was informed by an information officer of the Residential Tenancy Branch that pursuant to s.47 of the *Residential Tenancy Act* she had filed her application outside the legislated time frame of 10 days and that she needed to amend her application to include an application for additional time to dispute the notice to end tenancy.

The tenant denied that this conversation had taken place and did not amend her application and therefore has not applied for additional time to dispute the notice to end tenancy.

The tenant explained that the reason for the delay was that she did not have access to a computer. I am unable to grant the tenant more time to make her application because she has not applied for more time. Even if I accept her explanation of why she did not amend her application to include an application for addition time, I am unable to grant the tenant more time without proof that exceptional circumstances prevented her from complying with the statutorily prescribed time frame.

Section 66(1) of the Act provides:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3).

The Act specifically provides a ten day time-frame in which a party can apply to dispute a notice to end tenancy. In this case, the applicant applied for dispute resolution 19 days after having received the notice to end tenancy.

As stated above, under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66).

In this matter, the word *exceptional* implies that the reason(s) for failing to apply for dispute resolution in the time required are very strong and compelling. On reflection of the reasons advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented her from filing for dispute resolution within the legislated time limit and accordingly I dismiss the application.

In addition, I also find that had the tenant filed her application to dispute the notice to end tenancy in a timely manner, she would not have been successful because the landlord has provided adequate evidence to support the reasons for the notice to end tenancy.

Accordingly, the notice is upheld and the tenancy will end in accordance with the notice. The tenant's claim to set aside the notice is dismissed. The tenant must also bear the cost of filing her application.

I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the landlord is successful in her application, the landlord is entitled to the recovery of the filing fee. The landlord may retain \$100.00 from the security deposit

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by 1:00pm on February 01, 2018.

The tenant's application is dismissed in its entirety.

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: January 03, 2018

Residential Tenancy Branch