



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated December 17, 2017 to be effective January 17, 2018 and the tenant confirmed it was served by posting it on the door. The effective date of the Notice is automatically corrected by section 53 of the Act to January 31, 2018 as a One Month Notice must end the tenancy on the day before the day rent is due. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated December 27, 2017 by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 1, 2017, rent is \$1300 a month and a security deposit of \$650 was paid in increments with the last payment on February 20, 2018. The landlord served a Notice to End Tenancy for the following reasons:

1. The tenant or a person permitted on the property by them has
 - a. Seriously jeopardized the health, safety or other lawful right of another occupant or the landlord;
 - b. Has put the landlord's property at significant risk.

2. The tenant has allowed an unreasonable number of occupants in the unit; and has not done required repairs;
3. The tenant has sublet without consent;
4. The tenant did not pay the security deposit within 30 days as required by the tenancy agreement.

The landlord explained that the tenant had had another couple to live in the home during the summer. The home is a four plex with the tenant occupying one of the units which has 3 bedrooms. The landlord said the other tenants in the building complained that the tenant's guests were wanted by the police which made them fear for their safety. The tenant said the couple were not wanted by the police and only stayed for two weeks while they got other housing.

The landlord said the tenant did not pay his full security deposit on time, they sent a payment of \$100 and then of \$50 just recently. The tenant said he just forgot and could not find the copy of this lease.

The landlord said the tenant will keep the unit at less than the minimum recommended heat and this is causing excessive sweating and damage to the interior such as mold buildup. He does not clean up mold on the window sills if it appears. The landlord said he had had a restoration company into the unit who said the unit had to be kept at 68 to 70 degrees Fahrenheit. He called them to investigate the moisture problem and they investigated over several days. They noted the home was often at 50-55 degrees Fahrenheit with 71% humidity and said this was causing the moisture problems inside the home. The landlord said this is doing significant damage to the home. The relative of a tenant said she keeps her home at 15 degrees Celsius and she is comfortable and has no moisture issues. She said she has cleaned the sills several times; maybe some window seals are broken. The tenant said he has noticed water in the kitchen and the landlord said he would investigate that immediately. He lives in another part of BC. The landlord said the windows and their drains were cleaned by the first person he sent but the company says the temperature is being kept too low and that is the problem.

The landlord also alleges the tenant is not keeping the suite in a reasonably clean manner which has been noted by him in July and September when he visited and by several service people. He said this invites pests and is likely to cause damage. Furthermore, the tenant is storing a lot of items such as furniture and garbage in the carport. This blocked a drain and caused water backup into another unit. The relative of the tenant contended there is no other storage area and not enough garbage cans.

The landlord said he has discussed the situation with the tenant repeatedly and he has two double cans which is correct for the four plex.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. Section 47 of the Act lists causes, any one of which is sufficient cause to end the tenancy.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that they or persons permitted on the property by them are causing or likely to cause significant damage to the landlord's property. I find some guidelines for landlords and tenants state:

The furnace must be in good repair and be able to heat all living spaces to a temperature of 22 degrees Celsius. In the winter, when it is really cold, the furnace must be able to keep up a temperature of at least 16 degrees Celsius.

I find this accords with the findings of the restoration company as quoted by the landlord. I find the temperature of 15 celsius asserted by the relative of the tenant does not meet minimum standards. Furthermore, I find the restoration company found that having the temperature below 60 degrees Fahrenheit in a home was causing excess condensation and on some days, they found this home to be below 40 degrees. I find that 15 degrees Celsius converts to 59 degrees Fahrenheit. I find the low temperatures maintained by the tenants are causing significant damage to the landlord's property. I find also that using the carport as a storage area for furniture and garbage has been causing other damage to the home as it caused water back up and may encourage pests.

The tenant also did not pay his security deposit on time as required. Although he said he forgot, I find this statement inconsistent with the fact that he sent partial payments to the landlord.

I have the landlord has satisfied the onus of proving on a balance of probabilities that he has good cause to end the tenancy. I found his evidence credible on the above points. I find it is not necessary to comment on the subletting or undesirable guests and the

landlord's other evidence is sufficient to satisfy the onus. I dismiss the application of the tenant.

When the tenant's application is dismissed, section 55 of the Act provides the landlord is entitled to an Order of Possession. The parties agreed that the Order of Possession would be effective May 1, 2018.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed with no recovery of the filing fee due to lack of success. The tenancy is at an end on January 31, 2018 as corrected on the Notice. An Order of Possession is issued to the landlord effective May 1, 2018. .

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: February 22, 2018

Residential Tenancy Branch