



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLDEN SUN TRADING COMPANY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with an application by the landlords pursuant to the *Residential Tenancy Act* (“the Act”) for an Order of Possession for Cause pursuant to section 55 and to recover the filing fee from the tenant for the cost of this application pursuant to section 72.

Both parties attended this hearing (the tenant and two representatives for the landlords). Both parties were given full opportunity to be heard, to present evidence and to make submissions. The landlords provided evidence that a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) was posted on the tenant’s door on November 7, 2017. The landlords testified that the tenant was personally served with the landlords’ Application for Dispute Resolution on January 2, 2018 and served with additional evidence for this hearing personally on February 13, 2018. Based on the tenant’s confirmation of receipt of all of the landlords’ materials, I accept that the tenant was sufficiently served with the landlords’ 1 Month Notice, Application for Dispute Resolution hearing package and additional evidence in accordance with section 88, 89 and 90 of the Act.

Preliminary Issue

The tenant testified that he received the 1 Month Notice to End Tenancy on November 10, 2017 (3 days after its posting on his door). The tenant filed his application for dispute resolution on January 3, 2018. The tenant testified that it just didn’t come to his attention that he should file an application – that he wasn’t sure what to do. Section 66 of the Act provides that an arbitrator **may extend a time limit in only exceptional circumstances**. The tenant has indicated that it did not occur to him to file sooner; this *does not provide exceptional circumstances to justify extending the 10 day time limit* for the tenant to apply.

Background and Evidence

This tenancy began on April 1, 2017 as a month to month tenancy with a rental amount of \$650.00 payable on the first of each month. Landlord TD testified that the landlords continue to hold the \$325.00 security deposit paid by the tenant at the outset of the tenancy. The landlords did not submit a copy of the written tenancy agreement but testified that a written tenancy with an addendum including additional terms exists between the parties.

The landlords issued a 1 Month Notice to End Tenancy for Cause on November 7, 2017. On the 1 Month Notice, the landlords relied on one ground to end the tenancy,

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord(s).

As evidence for this hearing, the landlord TD testified that the tenant has exercise equipment on his patio which is not allowed according to the addendum to the residential tenancy agreement. Since his move in, the landlord TD testified that there has been some “concern” from other tenants regarding the noise from the tenant’s rental unit. An incident was recorded involving a threat by the tenant to another occupant of the building in November 2017. The landlords submitted a comprehensive timeline of the history of the tenant’s stay in the rental unit. The timeline included several noise and other complaints as well as two written warnings to the tenant.

The tenant agreed that the relationship between himself and the downstairs neighbour is vexatious. He stated that the downstairs neighbour started pounding on her ceiling the first day of his tenancy. He also testified that, on November 6, 2017, his adult son attended for dinner and that the two of them got into a dispute because he was not allowed to have the son stay over at the rental unit. During the disagreement with his son, the downstairs tenant was pounding on the ceiling, according to the tenant. The tenant testified that, as he was showing his son to the door, the downstairs neighbour was at the door and she got involved in the scuffle.

The landlords submitted an email from the downstairs neighbour describing the incident and stating that she was intimidated by the tenant.

Analysis

The landlords have provided evidence to support the 1 Month Notice issued to the tenant for significantly interfering with or unreasonably disturbing another tenant based on the documentary evidence submitted. The tenant's evidence at this hearing did not deny the incidents described by the landlords but offered explanations. I accept the evidence of the landlords documenting the problems during this tenancy. In this case, I find that the landlords have sufficiently proven, on a balance of probabilities that the tenant unreasonable disturbed his neighbouring tenants and the landlords.

The tenant did not make an application pursuant to section 47(4) of the Act within ten days of receiving the 1 Month Notice. I have found there are no exceptional circumstances to justify extending the time limit for the tenant. In accordance with section 47(5) of the *Act*, the tenant's failure to take either action within ten days led to the end of his tenancy on the effective date of the notice. I have found that the 1 Month Notice is justified by the testimony and documentary evidence of the landlords. In this case, the tenant was required to vacate the premises by December 31, 2017. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

As the landlords were successful in this application, I find that the landlords are also entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order to the landlords in the amount of \$100.00.

The landlords are provided with this monetary 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 Small Claims Division of the Provincial Court 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: March 15, 2018

Residential Tenancy Branch