



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT

Introduction

This hearing dealt with the Tenant's Application seeking an Order to cancel a One Month Notice to End Tenancy for Cause (the "One Month Notice") and authorization to change the locks on the rental unit.

The Landlord has made a separate, unrelated Application (the file number is noted on the cover page of this Decision for ease of reference), and is seeking an Order of Possession based on unpaid rent, a monetary order for unpaid rent, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

However, as the Landlord's Application has a hearing date of June 7, 2018 at 1:00 PM and the Notice of Hearing was not crossed with today's hearing, any evidence regarding the Landlord's Application for June, was not considered in today's hearing.

The Tenant did not appear at the hearing. The Landlord and their Agent appeared at the hearing and gave affirmed testimony, were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As this hearing was a result of the Tenant's Application, service of the Application and Notice of Hearing is not an issue.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a Tenant submits an Application for Dispute Resolution 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 the *Act*.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled?

Is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

The Landlord provided testimony about the Tenancy Agreement and stated that the tenancy began on November 15, 2017. Although the rent was established at \$1,000.00 a month, the Tenant was charged the prorated amount of \$500.00 for the last half of November 2017. On December 1, 2017, the Tenant paid a \$500.00 security deposit and the \$1,000.00 rent for December. On December 2, 2017, both the Landlord and the Tenant signed a Tenancy Agreement that included an addendum with the term: "No smoking inside the house or premises."

The Landlord stated that as a result of the Tenant regularly smoking marijuana inside the rental unit and after being asked several times to stop, that a Notice to End Tenancy, dated January 26, 2018, was taped to the front door of the rental unit on that date. Included in the Notice to End Tenancy was the vacate date of March 1, 2018. Page 2 of the Notice to End Tenancy documented the Landlord's concern that the Tenant was seriously jeopardizing the health of the Landlord (and their children) by smoking marijuana in the rental unit.

The Landlord testified that they received the Tenant's Notice of Hearing package on February 24, 2018.

The Landlord testified that the Tenant is still in the rental unit and has not paid rent for March or April 2018.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47 of the Act provides that a Tenant may dispute a Notice to End Tenancy by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice to End Tenancy. If a Tenant does not make an Application for Dispute Resolution within 10 days, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice to End Tenancy and must vacate the rental unit by that date.

Section 88 of the Act indicates that a Notice to End Tenancy may be served by attaching a copy to a door at the address at which the Tenant resides. Section 90 of the Act explains that if a document is attached to the door, the document is deemed served on the third day after it is attached. I find that the Tenant was deemed served with the Notice to End Tenancy on January 29, 2018.

I note that the Tenant applied for an Application to Cancel the Notice to End Tenancy on February 14, 2018; therefore, the Tenant did not make an Application for Dispute Resolution within 10 days of service. As the Tenant did not appear for this hearing, there is no evidence

before me that the Tenant had a serious or compelling reason for not filing the Application on time. Therefore, I am dismissing the Tenant's Application, as I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of February 28, 2018.

Section 52 of the *Act* requires that any Notice to End Tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

I find the Notice to End Tenancy, issued by the Landlord on January 26, 2018 complies with the requirements set out in Section 52.

Based on the above, I find that the Tenant's Application to cancel the Notice to End Tenancy is dismissed without leave to reapply and the Landlord is entitled to receive an Order of Possession.

Conclusion

I am granting the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Even though this tenancy has ended, the Landlord and Tenant should attend the hearing in June, which will deal with those other claims made by the Landlord.

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: April 30, 2018

Residential Tenancy Branch