



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC; OLC

Introduction

This is the Tenant's Application for Dispute Resolution made April 10, 2018, seeking to cancel a One Month Notice to End Tenancy for Cause issued on April 6, 2018 (the "Notice"); and for an unspecified Order.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

The Tenant testified that he e-mailed the Notice of Hearing documents to the Landlord on April 17, 2018. The Landlord acknowledged receipt of the documents. The Tenant did not serve the Landlord in accordance with the requirements of Section 89 of the Act; however, based on the Landlord's acknowledgement of receipt, I find that the Landlord was sufficiently served in accordance with the provisions of Section 71(2)(c) of the Act.

Issue(s) to be Decided

Is the Notice a valid notice to end the tenancy?

Background and Evidence

This tenancy began on January 11, 2018. Monthly rent is \$900.00 and is due on the first day of each month.

The Tenant received the Notice on April 6, 2018. The Notice provides the following reasons for ending the tenancy:

1. Tenant has allowed an unreasonable number of occupants in the unit.
2. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
3. Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security or physical well-being of another occupant.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord gave the following testimony:

1. Tenant has allowed an unreasonable number of occupants in the unit.

The Landlord stated that the Tenant's suite is a two bedroom apartment and that the Tenant's child is also on the tenancy agreement. The Landlord testified that a woman who identifies herself as the Tenant's sister is always there and he believes she lives there.

2. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord testified that there have been break-ins in the rental property since the Tenant began allowing strangers in. He stated that the security camera shows a person opening the door to the Tenant's suite and letting himself in. It also shows that person covering the security camera with his hands.

The electrical room, boiler room and some storage rooms have all been broken into. A crow bar was used on the locks for the boiler room and electrical room, breaking the locks. The Landlord stated that "every day" there are "6 or 7 women" hanging out in front of the Tenant's suite looking for the Tenant. The Landlord testified that the Tenant's guests are "always high on something". Other occupants in the building are complaining because they feel uneasy with these people hanging around the common areas.

The Landlord stated that he has given the Tenant three warnings, but that these people keep getting in the building, sometimes propping open the door, which is a security risk. The Landlord testified that "two weeks ago someone broke a window".

The Landlord stated that the police came to the building to remove a body from the unit across from the Tenant's suite. He stated that the Tenant and his friends arrived as the body was being moved and that soon afterwards the unit was ransacked. The Landlord stated that he has no proof, but he believes that the Tenant's friends ransacked the unit and took some items.

3. Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security or physical well-being of another occupant.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord testified that the Tenant has allowed one of his friends to make repairs his van in the rental property's parking lot, contrary to the terms of the tenancy agreement. The Landlord stated that this is against the law of the rental property. He testified that the van spilled oil over the parking lot, which has caused damage.

The Tenant gave the following testimony:

1. Tenant has allowed an unreasonable number of occupants in the unit.

The Tenant stated that he doesn't let his sister in to the rental property.

2. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Tenant denied letting the people depicted in the Landlord's photographs into the rental property; however, he acknowledged that he knew the person who covered the security camera lens. He stated that his friend was just being "goofy".

3. Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security or physical well-being of another occupant.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant did not respond to the Landlord's remarks about his friends possibly breaking into various areas in the rental property.

The Tenant acknowledged that his friend did some work on his van in the parking lot. The Tenant stated that the Landlord has never given him any written warnings, but acknowledged he had three verbal warnings about his guests causing other occupants to be disturbed.

Analysis

This was a difficult Hearing because the Tenant's speech was blurry and slurred. I found it hard to understand him and had to ask him to repeat himself often.

When a Tenant seeks to cancel a Notice to End Tenancy, the onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notice.

I find insufficient evidence that the Tenant as allowed an unreasonable number of occupants in the rental unit. The rental unit is a two bedroom suite and even if the Tenant had a guest stay over while his child is also there, I do not find three people occupying a two bedroom unit to be an unreasonable number.

I find that the Landlord did not provide sufficient evidence that the van repairs constitute "illegal activity" or that the Landlord gave the Tenant written notice to correct a breach of a material term of the tenancy agreement.

With respect to the other reason for ending the tenancy, I find that the Landlord has provided sufficient evidence. The Landlord provided photographs and a short video taken by the security camera. This evidence shows that people are loitering in front of the Tenant's suite and that on three separate occasions the Tenant's friends covered the lens to the security camera. I find this behaviour to be odd for an adult to engage in and question the reason for doing so.

The Notice gives an incorrect effective date for the end of the tenancy; however, Section 53 of the Act provides that if the effective date stated in a notice is earlier than the earliest date permitted under the applicable section (in this case, Section 47 of the Act), the effective date is deemed to be the earliest date that complies with the section.

Section 47(2) of the Act provides:

(2) A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Rent is due on the first of each month, and therefore I find that the effective date of the Notice is May 31, 2017.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is hereby provided with an Order of Possession effective **1:00 p.m., May 31, 2018, for service upon the Tenant.** This Order may be enforced in the Supreme Court of British Columbia.

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: May 29, 2018

Residential Tenancy Branch