



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On September 2, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for the rental unit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord testified that he received two evidence packages from the Tenant. The Tenant stated that although she received a registered mail notice at her door, when she went to the post office to pick up the package, all she received is the return envelope that she had sent to one of the Landlords and did not receive an evidence package from the Landlords.

The Landlord stated that the evidence he submitted was mostly copies of the correspondence that he had with the Tenant and that she would be aware of the referenced documents.

I found that the Landlord could refer to his evidence during the hearing and gave the Tenant permission to object and argue the admission of any evidence if required. Both parties agreed to continue with the hearing. No concerns regarding the admission of evidence by either party was raised during the hearing.

Issues to be Decided

Should the One-Month Notice to End Tenancy for Cause, dated August 20, 2018, (the "One-Month Notice") be cancelled, pursuant to Section 47 of the Act?

Should the Tenant be reimbursed for the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The Tenant and the Landlord agreed on the following terms of the tenancy:

The fixed term tenancy began on April 1, 2017 and continued on as a month-to-month after one year. The monthly rent is \$1,105.00 and the Landlord collected a security deposit and a pet damage deposit of \$531.25 each.

The Landlord testified that he served the One-Month Notice on August 20, 2018, by posting it to the Tenant's door. The move-out date on the One-Month Notice stated September 30, 2018. The Landlord stated that he served the One-Month Notice on the Tenant as he believed she breached a material term of the Tenancy Agreement that was not corrected within a reasonable time after written notice to do so. Although he had also indicated on page 2 of the One-Month Notice that the Tenant did not comply with an order, he did not feel that it applied and did not speak to this issue.

The Landlord explained that a condition of living in an Affordable Living Unit, is that the Tenant has to provide their previous years' Notice of Assessment (NOA) as part of the covenant between the City and the Landlords. On June 28, 2018, the Landlord stated that they issued a notice to all tenants that the Landlord required their 2017 NOAs by July 31, 2018. As there were some issues with the June 28, 2018 notice, the Landlord issued another notice dated July 26, 2018 to clarify the request.

On August 1, the Landlord stated that they sent a notice to a few of the tenants, including the Tenant, who had not submitted their NOA and asked for feedback and reasons for the delay.

The Landlord had been corresponding with the Tenant about when she would submit her NOA and because the Landlord had not received the Tenant's NOA as of August 20, 2018, he issued the One-Month Notice.

By September 12, 2018, the Tenant had still not forwarded her NOA. The Landlord stated that there were steep fines that the Landlord could incur if they didn't supply the

tenants' NOA if requested by the City. He stated that the Tenant had caused an unreasonable delay and that it had been very frustrating to have had to continually prompt the Tenant to abide by the conditions of her tenancy and to supply her NOA for her housing situation. The Landlord acknowledged that they did not incur any losses due to fines for late NOA's.

The Landlord felt that the Tenant only got serious about providing her NOA to him after he served the One-Month Notice. The Landlord stated he received the Tenant's NOA on September 21, 2018.

The Landlord is requesting an Order of Possession on the basis that the Tenant breached a material term in her Tenancy Agreement.

The Tenant testified that she abided by the June 28, 2018, request by the Landlord to forward her T-4 or her 2017 NOA. The Tenant stated that she forwarded the Landlord her T-4 and thought that that would have been an adequate response.

The Tenant stated that she did not receive the notice from the Landlord, dated July 26, 2018, but did receive the correspondence on August 1, 2018. She stated she had been corresponding with the Landlord about why she was delayed and submitted a copy of the email she sent to Canada Revenue Agency ("CRA"), dated August 20, 2018, explaining the situation that she was in and asking them to expedite her request for an updated NOA.

The Tenant stated that the updated 2017 NOA from the CRA was delivered to her online account on September 7, 2018, and she forwarded it to the Landlord on September 21, 2018.

The Tenant stated that she had been working with the CRA to amend her NOA based on a previous over calculation of her work hours. She stated the delay in fulfilling the Landlord's request was as a result of working with the CRA to provide her with an updated copy of her NOA.

Analysis

The Landlord served the One-Month Notice on the Tenant based on Section 47(1)(h) of the Act that states that the Tenant has failed to comply with a material term and has not

corrected the situation within a reasonable time after the Landlord gives written notice to do so. In this case, I accept the Landlord's testimony and evidence that he provided written notice to the Tenant to follow through with a term of her tenancy and that she had failed to provide the requested document (the NOA) by the time the One-Month Notice was issued on August 20, 2018. I also accept the undisputed testimony of the Tenant that she supplied the NOA to the Landlord on September 21, 2018.

When deciding if the One-Month Notice is valid, I have to consider when the Landlord provided written notice to the Tenant about the breach of the material term and if the Tenant responded in a "reasonable time" after the written notice.

The Landlord acknowledged that the first notice to all of tenants of the residential property was issued on June 28, 2018 and, that there were some corrections to that notice that were clarified in the July 26, 2018 correspondence. Both parties agreed that they had communicated during the month of August and that as of August 20, 2018, the Landlord had issued the One-Month Notice and that by September 21, 2018, the Landlord had received the Tenant's NOA.

I accept the Landlord's testimony that he spent a lot of time and energy attempting to obtain the proper paperwork from the Tenant as a result of her failing to follow through with a condition of her tenancy. I also accept the Tenant's testimony that she was actively working with the CRA to obtain the paperwork she required to abide by the Landlord's request. As a result of reviewing the testimony and evidence presented by both parties, I find that the Tenant did eventually provide the documentation, the NOA, as requested by the Landlord in a reasonable amount of time after written notice was provided. I find that the Landlord's One-Month Notice is not valid and cancel the One-Month Notice and therefore, will not be issuing an Order of Possession pursuant to Section 55 of the Act.

When deciding on whether the Tenant should be compensated for the filing fee, I considered the Landlord's testimony of how much time, effort and frustration he spent attempting to obtain the NOA from the Tenant. As such, I do not award the Tenant compensation for the \$100.00 filing fee.

This tenancy will continue until ended in accordance with the Act.

As this tenancy will continue, I recommend to all parties that they work together to resolve any conflict in a respectful manner and when required, to communicate in writing to ensure clear understanding and as a means to keep track of their interactions.

Conclusion

The Tenant's Application is upheld and the One-Month Notice to End Tenancy for Cause, dated August 20, 2018, is cancelled.

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: October 18, 2018

Residential Tenancy Branch