



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTAL LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC
 OPC, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on September 10, 2018. The Tenant applied to cancel a One-Month Notice to End Tenancy for cause (the “Notice”), dated August 31, 2018. The Landlord’s Application for Dispute Resolution was made on September 24, 2018. The Landlord applied to enforce a One-Month Notice to End Tenancy for cause (the “Notice”), dated August 31, 2018, and to recover her filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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.

Issues to be Decided

- Should the Notice dated August 31, 2018, be cancelled pursuant to section 47 of the Act?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to the recovery of the filing fee for her application?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2010, and that rent in the amount of \$937.00 is to be paid by the first day of each month. The parties also agreed that the Tenant paid the Landlord a \$400.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties testified that the Landlord served the Notice by posting it to the front door of the rental unit on August 31, 2018. The reason for the Notice was checked off as follows:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*

The Notice states the Tenant must move out of the rental unit by September 30, 2018. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. Both parties provided a copy of the Notice into documentary evidence.

The Landlord testified that she entered the rental unit on July 18, 2018, to conduct a fire inspection and found the rental unit to be very unclean and with a large amount of the Tenant's personal possession stored and laying about the rental unit. The Landlord testified that she issued a written warning to the Tenant that he was in breach of his tenancy agreement due to his unclean rental unit and requested that the rental unit is cleaned by July 30, 2018, for a follow-up inspection.

The Tenant testified that he does struggle with keeping up will daily clean due to his current health restrictions. The Tenant also testified that he did receive the Landlord written warning on July 20, 2018, and that he cleaned his rental unit, as best as he could. However, he had found the letter to be unclear as to what cleaning she had wanted to be done. The Tenant testified that he waited all day, on July 30, 2018, for the Landlord to arrive and inspect the rental unit, as per her letter, but that she never attended to conduct the inspection.

The Landlord testified that she did not detail what cleaning needed to be completed as she felt that it was obvious. The Landlord also testified that she decided not to conduct the inspection on July 30, 2018, as her supervisors would be conducting an inspection with her, of all of the rental units, on August 29, 2019. When asked the Landlord testified that she notified the Tenant that the inspection had been moved to August 29, 23018 on August 25, 2018.

The Landlord testified that when her and her supervisor conducted the inspection of the Tenant's rental unit on August 29, 2018, the unit was still very dirty, there was garbage on the floor, and the Tenant still had many stored items in the rental unit. The Landlord testified that they decided to serve the Notice to end the tenancy due to this inspection. The Landlord provided 11 pictures of the rental unit taken on August 29, 2018, into documentary evidence.

The Tenant testified that he has several items stored in his rental unit. However, that this is only due to the fact that the Landlord had not provided a storage unit as he was promised at the outset of his tenancy.

The Landlord testified that there is only 16 storage unit on the rental property of 50 rental units, and there isn't one currently available for the Tenant.

Analysis

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

I find that the Tenant received the Notice on September 3, 2018, three days after it was posted to the Tenant's front door. Pursuant to section 47(4) the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until September 13, 2018, to file his application to dispute the Notice. The Tenant filed his application on September 10, 2018, within the statutory time limit.

I accept the sworn testimony of both parties that the Tenant struggles with keeping the rental property clean due to his current health restrictions. Section 32(2) of the *Act* stated the following:

Landlord and tenant obligations to repair and maintain

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I have reviewed the pictures provided into documentary evidence by the Landlord, and I find that the pictures show an untidy and dirty rental unit. However, I find that there is a lack of evidence before me prove that the Tenant's untidy lifestyle has created a health concern in the rental unit that would justify ending the Tenant's tenancy. Additionally, I

accept the testimony of the Tenant that he has taken steps to clean the rental unit since the Landlord's last inspection on August 29, 2018

In this case, I find that the Landlord has not provided sufficient evidence, to satisfactorily me, that the Tenant been anything more than untidy in the rental unit. In the absence of sufficient evidence from the Landlord to prove that the Tenant has not maintained the rental unit within reasonable health, cleanliness and sanitary standards, as required by the *Act*, I must allow the Tenant's application to cancel the Notice.

Therefore, I find the Notice dated May 14, 2018, of no effect, and the tenancy continues until it is ended in accordance with the *Act*.

As the Landlord was unsuccessful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the Tenant's application, and I find the Notice dated August 31, 2018, of no effect under the *Act*.

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 23, 2018

Residential Tenancy Branch