



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FLETCHER VANTAGE WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 20, 2018. The matter was set for a conference call.

The Property Manager and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 is described in this Decision.

Preliminary Matter

The applicant/Tenant has requested a correction to the decision of the Residential Tenancy Branch dated October 18, 2018.

Section 78 of the *Residential Tenancy Act* (Act) enables the Residential Tenancy Branch to:

- correct typographic, grammatical, arithmetic or other similar errors in a decision or order,
or
- deal with an obvious error or inadvertent omission in a decision or order.

The Tenant has applied for a correction on the basis that there was a clerical error maybe by the Residential Tenancy Branch in regard to the date she filed her application to dispute the Notice.

Upon further review of the Tenant's original application, I have determined the Tenant's application was received within the required legislated timeline.

As a result, I find that a correction of the decision dated October 18, 2018, is required.

During the Hearing, the Property Manager testified that she was not able to provide a copy of the written warning for the breach of a material term of the tenancy, that she had issued to the Tenant. The Property Manager testified that she wanted to withdraw her request to end this tenancy due to a material breach, as indicated on the Notice.

However, the Property Manager also testified that she wished to proceed on the remaining reason to end the tenancy, checked off within her the Notice; that the Tenant or a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Tenant did not dispute the Landlord's request.

I find the Property Manager's request to be reasonable, and I will proceed in this hearing on the remaining reason checked off within the Landlord's Notice.

Issues to be Decided

- Should the Notice issued on August 20, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began on March 31, 2018. Rent in the amount of \$1,500.00 is to be paid by the first day of each month. At the outset of the tenancy, the Tenant paid a \$750.00 security deposit and a \$500.00 pet damage deposit. The Property Manager provided a copy of the tenancy agreement into documentary evidence.

The Property Manager testified that she served the Notice to end tenancy to the Tenant on August 20, 2018, by posting it to the Tenant's door. The Property Manager provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Notice states that 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. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Property Manager testified that the Tenant has been causing problems at the rental property since she moved in and that she had spoken to the Tenant several times regarding her behaviour. The Property Manager testified that she had informed the Tenant that she needed to resolve her difference with the Occupant of the Landlord's other rental unit (the "Occupant"), herself as it was a personal issue between the parties and that she needed to figure out how to get along with her neighbour. The Property Manager testified that the Tenant and the Occupant have been not getting along since the Tenant moved in and that the Tenant has been acting aggressively towards the Occupant.

The Property Manager testified that she has personally received an excessive number of text messages from the Tenant regarding the dispute the Tenant is having with the Occupant. The Property Manager testified that the Tenant messages her late at night, on the weekend and while on holiday regarding the personal problems the Tenant is having. The Property Manager advised the Tenant that she was in her position to deal with rent, building issues and matters related to her tenancy and that it was not her problem to deal with a personal disagreement between the Tenant and the Occupant. The Property Manager testified that she asked the Tenant to stop messaging unless there was a problem with the rental unit. However, the Tenant did not stop texting the Property Manager regarding her disagreement with the Occupant.

The Property Manager testified that she finds the constant text messaging from the Tenant to be extremely disturbing and that the Tenant is often drunk and using foul language in her messages. The Property Manager provided ten pages of text messages she had received from the Tenant into documentary evidence.

The Property Manager also testified that she had received numerous verbal and written complaints regarding the Tenant from the Occupant, as well as from the owners of the property next door. The Property Manager testified that the owner of the property next door provided her with an official written complaint on August 18, 2018, stating that the Tenant and her boyfriend were the cause of numerous problems in the neighbourhood and that he has had "no peace" since the Tenant moved in. The letter detailed the loud fights between the Tenant and her boyfriend and the need for the police to attend the rental unit on several occasions to deal with

disputes caused by the Tenant. The Property Manager provided three letters of complaint regarding the Tenant into documentary evidence.

The Property Manager testified that she is not seeking to end the tenancy of the Occupant as that individual has lived there for almost two years without complaint from the neighbouring property owners and that she believes the Tenant is the problem. The Property Manager provided two letters from the neighbouring property owners regarding the good behaviour of the Occupant into documentary evidence.

The Tenant testified that she believes that it is the Property Manager's responsibility to resolve the dispute between her and the Occupant. The Tenant also testified that she and the Occupant used to be friends but that they had a falling out over a few cigarettes and that they have not gotten along since. The Tenant testified that the Occupant has lied to the Property Manager and that she is the cause of the problems on the rental property, not her.

The Tenant also testified that she was surprised to see the complaint from the neighbouring property owners, as she had thought they were friends.

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, posted to the front door of the rental unit, on August 23, 2018, pursuant to the deeming provisions stipulated in section 90 of the *Act*.

Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenant had until September 2, 2018, to file her application to dispute this Notice. I have reviewed the Tenant application for dispute resolution, and I find that the Tenant filed her application on ~~September 6, 2018,~~ August 30, 2018, within the legislated timeline.

~~Therefore, I find that the Tenant filed to dispute the Notice outside of the legislated timeline and is therefore is conclusively presumed to have accepted the Notice and that her tenancy would~~

~~end in accordance with that Notice. I find the Notice dated August 20, 2018, is valid and enforceable.~~

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case. I find the written complaint from the owners of the property next door to the rental unit to be a credible account of the disturbance caused by the Tenant on the rental property. I also find that the Occupant and the owners of the property next door would have been disturbed by actions of the Tenant described in that letter, and the repeated police attendance at the rental property.

Additionally, I find that the Property Manager would have been significantly disturbed by the excessive number and content of the text messages she received from the Tenant.

For the reasons stated above, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenant's application to cancel the Notice issued on August 20, 2018.

I find the Notice dated August 20, 2018, is valid and enforceable.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 2 days after service of the Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's application to cancel the Notice, issued on August 20, 2018, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. 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.

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

Date Corrected: October 25, 2018