



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for monetary compensation, for “other” claims that do not fall under a specified category, and for the recovery of the filing fee paid for this application.

The Landlord and a witness for the Landlord were present at the outset of the teleconference hearing. The witness was asked to exit the call until it was time to present her testimony, at which time she was called back in. The Tenant was also present for the duration of the teleconference hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence package. The Tenant confirmed receipt of the Landlord’s evidence package. As such, I find that the parties were duly served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Despite several warnings to not interrupt or speak over the other party, I muted the phones of both parties at various times during the hearing, so as to be able to hear the other party speaking or to be able to ask clarifying questions.

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

In accordance with Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, unrelated claims may be dismissed. Due to the limited time scheduled for the hearing, the Tenant's claims for monetary compensation and for "other" claims were dismissed with leave to reapply. The parties were informed at the hearing that only the Tenant's claim regarding the dispute of the One Month Notice would be addressed in this decision, along with consideration for the recovery of the filing fee.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties agreed that the tenancy began on September 28, 2017 for a monthly rent of \$1,100.00, due on the first day of each month. A security deposit of \$550.00 was paid at the outset of the tenancy.

The Landlord testified that the Tenant was served with a One Month Notice on September 2, 2018. The Tenant confirmed receipt of the One Month Notice on September 2, 2018 and applied to dispute the notice on September 7, 2018. The effective end of tenancy date of the One Month Notice was stated as September 30, 2018.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety of lawful right of another occupant or the landlord

Further details were provided as follows:

- Repeated late payment of rent
- Tenant continuously causing inconvenience to upstairs tenant, contributed to other tenant's stolen incident. Even after a notice was sent
- Has way of communication to upstairs tenant is inappropriate

(Reproduced as written)

The Landlord provided testimony that the Tenant has paid rent pate for nine out of the last 12 months. As first she let it slide, but stated that it was becoming difficult to deal with and was causing her to incur overdraft fees at the bank. The Landlord submitted financial statements into evidence showing the following dates of e-transfer rent payments from the Tenant:

- November 3, 2017
- December 6, 2017
- January 4, 2018
- March 2, 2018
- April 2, 2018
- June 4, 2018 (partial payment)
- June 11, 2018 (remaining rent payment)
- July 3, 2018
- August 2, 2018

The Tenant provided testimony that there were times when he was out of town, and had advised the Landlord that rent would be paid late.

The Landlord also provided testimony regarding her concerns for the property as the Tenant was leaving the garage door to the home open. The Landlord clarified that the Tenant and an upstairs tenant shared the garage space and that the Tenant was made aware of this at the beginning of his tenancy.

The Tenant advised the Landlord that the garbage bins of the upstairs tenant had a strong smell and the Landlord told the upstairs tenant to clean them. As the Tenant continued to complain, the Landlord attended the home and stated that she did not notice a significant odour and stated that the garbage bins were dry inside.

In August 2018, the upstairs tenant informed the Landlord that she felt harassed by the Tenant due to the issue with the garage and the garbage bins. The Landlord again attended the home and brought a worker who confirmed that the smell of the garbage

bins was not of concern. A letter from the worker was submitted into evidence stating that he did not notice a smell from the garbage bins.

The Landlord submitted into evidence a text message from the upstairs tenant dated July 11, 2018, in which the tenant advised of the garage door being left open. A photo was attached to the message showing a car parked underneath the garage door to keep it open.

While at the home, the Landlord found the garage door open and disconnected. They reconnected the garage door, but continued to get complaints from the upstairs tenant that it was being left open. On August 12, 2018, the Landlord received a text message from the Tenant in which she stated he used inappropriate language towards herself and the upstairs tenant. The text message exchange was submitted into evidence.

On August 16, 2018, the Landlord told the Tenant to stop leaving the garage door open as someone had stolen items from the garage that belonged to the upstairs tenant.

On August 24, 2018, the Landlord sent a letter to the Tenant advising that she had followed up on his concerns regarding the garbage bins and that the issue had been resolved. She also asked him to stop leaving the garage door open.

The upstairs tenant joined the hearing as a witness for the Landlord. She stated that the issue with the garage door had been ongoing since June or July 2018 and has put her possessions at risk. She noted that she has had some items stolen from the garage when the door has been left open.

The witness noted that the Tenant uses his car to prop the garage door open, or at times has disabled the controls for the door. She has spoken to the Landlord on many occasions and stated that the issues are still occurring. She also spoke about conflicts occurring between herself and the Tenant over the ongoing issue with the garage door.

The Tenant stated that he has left the garage door open as the problem with the garbage bins has not been dealt with. He also stated that nothing has been stolen from the garage, as he also has items stored there.

The Tenant agreed that he will park his vehicle under the garage door to keep it open, and that he disconnected the door one time before it was reconnected by the Landlord.

He provided testimony that on the first day he viewed the rental unit, he notified the Landlord about his concerns with the garbage bins being stored in the garage and causing a smell. He also noted that he has told the upstairs tenant and her son to keep the bins outside, but that they keep putting them back into the garage.

Analysis

I note that in accordance with the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

I refer to Section 47(1)(b) that states that a One Month Notice may be served to a tenant if they are repeatedly late paying rent. As both parties were in agreement that rent is due on the first day of each month, I accept the evidence before me that rent has been paid late in November 2017, December 2017, January 2018, March 2018, April 2018, June 2018, July 2018 and August 2018. I find the bank statements submitted by the Landlord to be compelling evidence regarding late payment of rent.

I also note that *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent* states that 3 late payments are sufficient to justify “repeated late payment”. As such, based on the late payment of rent alone, I find that the Landlord had reason to serve the tenant with a One Month Notice.

I also find that the issue with leaving the garage door open, despite many warnings not to, may have caused concern for the safety and security of the Landlord’s property and for the other residents in the home. Although there was dispute over the events that led to the garage door being left open, the parties were in agreement that this was happening. I find this to be a reason for issuing a One Month Notice under Section 47(e) of the *Act*.

As I find that the Landlord had at least one valid reason to serve the Tenant with a One Month Notice, I therefore dismiss the Tenant’s application to cancel the notice. As the notice has been found to be valid, I find that the tenancy ends on the effective date of the notice.

The One Month Notice incorrectly states September 30, 2018 as the effective end of tenancy date. Pursuant to Section 47(2) of the *Act*, one full rental month must be provided, which means that a One Month Notice served to the Tenant on September 2, 2018 would end the tenancy at the end of the following month, October 31, 2018.

Therefore, in accordance with Section 53 of the *Act*, I find that the effective end of tenancy date of the One Month Notice dated September 2, 2018, is automatically corrected to October 31, 2018.

As the One Month Notice submitted into evidence is in compliance with Section 52 of the *Act*, pursuant to Section 55(1), I issued the Landlord an Order of Possession, effective October 31, 2018 at 1:00 pm.

As the Tenant was not successful in his application to cancel the One Month Notice, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **on October 31, 2018 at 1:00 pm**. This Order must be 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.

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