



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, OLC, FFT

Introduction

This hearing was convened in response to an application filed August 07, 2018 by the tenant for an order setting aside a 1 Month Notice to End the tenancy, for the landlord to comply with the Act and to recover their filing fee.

The tenant and the landlord with their agent attended and participated in the conference call hearing. The parties were provided opportunity to mutually resolve their dispute to no avail, with each party confirming to me they preferred my Decision in this matter. The landlord acknowledged receiving the tenant's application and Notice of Hearing package and all of the evidence of the tenant.

The tenant claims they did not receive any of the landlord's document evidence despite the landlord's claim they sent all of their evidence to the tenant by e-mail and which they also provided to me. The tenant confirmed their email address as stated in the Notice of Hearing and that they had not received anything from the landlord. The landlord stated they had not provided the tenant with their document evidence by any other method. As the landlord did not provide the tenant with evidence in accordance with Section 88 of the Act and as in the information provided to the landlord, I determined the landlord's document evidence inadmissible and I did not consider it. None the less the landlord was given opportunity to provide testimonial evidence during the hearing to which the tenant was able to respond. During the hearing the tenant was permitted to upload the entire copy of the Notice to End in this matter into the service portal as it was originally only partially uploaded. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue to be Decided

Is there sufficient cause to end the tenancy?

Should the 1 Month Notice to End tenancy be set aside?

If the Notice is not cancelled, is the landlord entitled to an Order of Possession pursuant to **Section 55** of the Act?

Background and Evidence

The *relevant* evidence in this matter is as follows. This tenancy started in September 2017. The rental unit is in a house occupied by both parties. I do not have benefit of the tenancy agreement; however it is undisputed the parties agreed that the tenant was originally permitted to keep a (German Sheppard) dog in the unit. It is further undisputed the tenant then acquired a second dog. However the parties provided contrasting testimony as to whether the tenant was authorized to keep the second dog.

The parties agreed that on July 22, 2018 the tenant was given a 1 Month Notice to End Tenancy for Cause (Notice) with an automatically adjusted effective date of August 31, 2018 by placement of it in the tenant's mailbox. The tenant filed to dispute the Notice on the last day permitted to do so.

The landlord placed several reasons in the Notice for seeking an end to the tenancy pursuant to Section 47 of the Act. Specifically the landlord alleged, **(1)** *the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;* **(2)** *the tenant has seriously jeopardized the health, or safety or lawful right of another occupant or the landlord,* **(3)** *the tenant has allowed an unreasonable number of occupants in the unit, and* **(4)** *the tenant has caused extraordinary damage to the unit or property.*

The parties were apprised that the landlord has the burden of proof in respect to issuing a valid Notice to End and that not every reason in the Notice must be proven for the Notice to be effective.

In part, the landlord testified that the tenant and the tenant's dog caused damage to the house vinyl siding. The landlord described the damaged siding as it being chewed by the tenant's dog, subsequent to the tenant causing the same vinyl siding area to blister from the heat of their barbeque. The tenant acknowledged placing their barbeque close to the house siding and that as a result the vinyl siding suffered permanent buckling and

blistering (damage) from the heat. The parties agreed in respect to the damage being permanent and requiring repair; however the tenant has not attended to the repairs.

The landlord also testified the tenant's dog scratched, chewed or gnawed all around the inside areas of the wood fence of the property. The tenant acknowledged their German Sheppard dog was contained within the fenced area during the day while the occupants of the rental unit were at work and during which time the dog chewed or gnawed the wooden fence posts and other protruding sections of the fence. The landlord also testified the tenant placed a lock on the side gate to a common area of the residential property without permission and without providing the landlord a key for their common access, despite reminders to do so, with the effect of making the locked area exclusive to the tenant and unavailable to the landlord. The tenant did not dispute this latter claim testifying they placed the lock on the gate for reasons of security given that a burglary had occurred in the neighbourhood.

The landlord was aptly apprised during the hearing that 2 individuals occupying the rental unit is not an unreasonable number of occupants in this matter.

Analysis

The landlord bears the burden of proving on the balance of probabilities that they have sufficient grounds to end the tenancy.

The tenant's evidence in testimony acknowledged they caused permanent damage to the vinyl siding of the house by excessive heat from their barbeque; and, that their dog caused excessive permanent damage to the fence structure of the residential property.

I find that by locking out the landlord from the property's common area the tenant unreasonably disturbed the landlord. But moreover, in this matter I find the tenant caused extraordinary damage to the landlord's property and as such the landlord has established sufficient grounds to end this tenancy, and for that reason I decline to set aside the Notice and effectively I dismiss the tenant's application.

Having upheld the landlord's Notice to End and effectively dismissed the tenant's application; I must now turn my mind to whether the landlord is entitled to an Order of Possession pursuant to **Section 55** of the *Act*. As the 1 Month Notice is signed, dated, gives the address for the rental unit, states the effective date of the Notice (albeit automatically amended pursuant to Section 53 of the *Act*), the reason for ending the tenancy, and additionally is in the approved form, I find that it complies with **Section 52** of the *Act*.

Based on the above the landlord is therefore entitled to an Order of Possession pursuant to **Section 55** of the *Act* for the effective date of the Notice. However, as the effective date of the Notice has passed, I find it appropriate to Order that the tenancy ends 2 days after the date the tenant is served the Order.

Conclusion

The landlord's Notice is upheld. The tenant's application is dismissed.

I grant an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding.

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: September 28, 2018

Residential Tenancy Branch