



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was scheduled for 9:30 a.m. on today's date, via teleconference call, to deal with a landlord's application for an Order of Possession for cause. The landlord appeared at the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for at least 25 minutes.

Since there was no appearance on part of the tenant, I explored service of hearing documents upon the tenant. The landlord testified that the hearing documents, including all evidence, were sent to the tenant at the rental unit address via registered mail on September 5, 2018. The landlord confirmed that the registered mail was successfully delivered to the tenant. The landlord provided a copy of the registered mail receipt, including tracking number, as proof of service. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The person appearing at the hearing and named on the application is an agent for the landlord. The agent requested the application be amended to include the name of the city, which is the landlord and named on the tenancy agreement. I confirmed the city is named on the tenancy agreement and the Notice to End Tenancy that is the subject of this proceeding and I amended the application as requested.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The month to month tenancy started on April 1, 2014. The rental unit is a subsidized rental unit operated by the city. The tenant was required to pay rent of \$375.00 on the first day of every month. The landlord collected a security deposit of \$187.50.

On August 14, 2018 the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of October 1, 2018 ("1 Month Notice"). The 1 Month Notice was posted to the rental unit door and put in the tenant's mailbox on August 14, 2018 in the presence of a witness. The tenant did not file to dispute the 1 Month Notice. The landlord filed for an Order of Possession on August 31, 2018. The landlord received rent payments for the months of September 2018 and October 2018 which were accepted for "use and occupancy only" as indicated on the receipts given to the tenant.

I reviewed the 1 Month Notice with the landlord during the hearing. I noted that it appears duly completed and it is in the approved form. On the second page is a section entitled "Details of Cause". In the space provided for Details of Cause the landlord wrote "See attachment". In the evidence package before me is a two page document entitled "Details of Cause". The landlord acknowledged that the two page "Details of Cause" was not served to the tenant with the 1 Month Notice. Rather, the landlord provided the tenant with the two page "Details of Cause" document with the evidence package sent to the tenant via registered mail on September 5, 2018.

The landlord stated that the tenant would have known the reasons for the eviction because the landlord served the tenant with multiple warning letters, as referenced in "Details of Cause" and provided in the evidence package; and, the landlord had a number of conversations with the tenant concerning the disturbing behaviour at the property related to suspected drug activity.

Referenced in the Details of Cause, and provided in the evidence package are three warning letters issued to the tenant on the following dates: May 28, 2018; June 6, 2018 and June 30, 2018. The June 30, 2018 letter is entitled "Final Warning" with respect to disturbing other occupants of the property. The landlord submitted evidence that on August 7, 2018 other occupants and the landlord's staff were significantly interfered with or unreasonably disturbed when a dog brought in by the tenant's guest tried to bite them; and, on August 12, 2018 the tenant's visitor unreasonably disturbed other occupants of the property by continuously honking the car horn, yelling, and throwing a can at a window which broke. The landlord stated the police have been involved and the continued disturbances of other occupants despite issuing the multiple warning letters to the tenant caused the landlord to issue the 1 Month Notice.

The landlord requested recovery of the filing fee by way of a deduction from the security deposit.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The landlord seeks an Order of Possession based on a 1 Month Notice served on August 14, 2018 by way of posting the 1 Month Notice to the rental unit door and leaving another copy in the tenant's mailbox.

Section 47(4) of the Act provides that a tenant has 10 days to file an Application to dispute a 1 Month Notice. If a tenant does not dispute the 10 Day Notice, section 47(5) provides that the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and must vacate the rental unit by that date.

In this case, I have accepted the unopposed evidence that the 1 Month Notice was posted to the rental unit door and left in the tenant's mailbox on August 14, 2018. Since the 1 Month Notice was posted and left in the mailbox, section 90 of the Act deems the tenant to have received the Notice three days later, or August 17, 2018. Accordingly, I find the tenant had until August 27, 2018 to file an Application to dispute the 1 Month Notice. The tenant did not file to dispute the 1 Month Notice by August 27, 2018 or at any other time. Yet, the tenant continues to occupy the rental unit.

Section 55(2) of the Act provides, in part:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

As for the 1 Month Notice that was served to the tenant on August 14, 2018, I find that it is in the approved form and it appears duly completed; however, I heard that the "Details of Cause" were not provided to the tenant at the same time as 1 Month Notice.

Although the landlord should have included or attached the “Details of Cause” when serving the 1 Month Notice, the landlord argued that the tenant would have known the reasons for the eviction based on the multiple warning letters issued to him and the oral conversations with the tenant. In the absence of the tenant at the hearing, I was not provided any opposing argument from the tenant.

Residential Tenancy Policy Guideline 11: Amendment and withdrawal of Notices provides, in part:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) set out the requirements¹ for giving a Notice to End Tenancy. The Legislation allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances.

In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

Upon consideration of the circumstances before, I find it is reasonable to amend the 1 Month Notice to reflect the Details of Cause that were served upon the tenant in writing by registered mail on September 5, 2018. I make this finding based on the following factors:

- I was provided unopposed evidence that the tenant was served with three warning letters, including a Final Warning issued on June 30, 2018
- the tenant was duly served with the 1 Month Notice, which he did not dispute.
- the tenant was served with the hearing package which included the “Details of Cause” and the warning letters and other details surrounding the disturbing incident(s) in August 2018; and,
- the tenant did not appear at the hearing to oppose any of this evidence,

In light of the above, I find it is reasonable in the circumstances to find the tenant “should have known” the details that were not served with the 1 Month Notice.

Having amended the 1 Month Notice, I find it meets the form and content requirements of section 52 of the Act and I uphold the 1 Month Notice. Therefore, I find the landlord is entitled to an Order of Possession as requested.

Taking into account the tenant has paid for “use and occupancy” for the month of October 2018, I provide the landlord with an Order of Possession with an effective date of October 31, 2018 to serve and enforce upon the tenant.

I award the landlord recovery of the \$100.00 filing fee by way of a \$100.00 deduction from the tenant’s security deposit.

Conclusion

The landlord has been provided an Order of Possession effective on October 31, 2018 to serve and enforce upon the tenant.

The landlord is authorized to deduct \$100.00 from the tenant’s security deposit to recover the filing fee paid for this application.

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 16, 2018

Residential Tenancy Branch