



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFL, OPC

This hearing dealt with cross-applications pursuant to the *Residential Tenancy Act* (the *Act*)
The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The tenant stated that she did not receive any documentary evidence from the landlord. The landlord advised that her assistant prepared the package and that she did not have any firsthand knowledge as to what, if any evidence was served to the tenant.

The Residential Tenancy Branch Rules of Procedure states as follows:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

As the landlord was unsure and was unable to provide sufficient proof as to what was sent by registered mail to the tenant, the landlords' documentary evidence was not considered in making a decision; however her testimony was. This was explained in detail to the landlord and she indicated that she understood.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issues to Decide

Is the tenant entitled to have the One Month Notice to End Tenancy for Cause set aside?, If not, is the landlord entitled to an order of possession?

Is the landlord entitled to the recovery of the filing fee for this application from the tenant?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenant has been living in this 56 unit complex for five years. The landlord testified that in the past year she has received numerous verbal complaints from other tenants regarding this tenant about ongoing noise and yelling coming from her unit as well as numerous people coming and going in and out of the unit. The landlord testified that the tenant also caused a fire in her unit by leaving items on the stove unattended. The landlord issued a One Month Notice to End Tenancy for Cause on October 8, 2018 on the following grounds:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

The landlord is requesting an order of possession.

The tenant gave the following testimony. The tenant testified that she adamantly disputes all of the landlords' allegations. The tenant disputes that she was never informed of any complaints against her or complaints from other tenants. The tenant testified that she has friends that will stay for several days to visit but the unit was never sublet to anyone. The tenant testified that she is respectful and considerate of other tenants and does not make noise as alleged. The tenant testified that she left a tea kettle on her stove unattended but was purely unintentional.

The tenant testified that nothing ever happened prior or since and that no damage occurred. The tenant testified that she wants to stay in the building.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The tenant provided disputing testimony along with witnesses that corroborated her version of the events. Based on the lack of supporting documentation, the landlord has not provided sufficient evidence to satisfy any of the grounds as noted on the One Month Notice to End Tenancy for Cause. Based on the above, I hereby set aside the One Month Notice to End Tenancy for Cause dated October 8, 2018 with an effective date of December 1, 2018; it is of no effect or force. The tenancy continues.

Conclusion

The One Month Notice is cancelled. The tenancy continues.

The landlords' application is dismissed in its entirety.

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: November 30, 2018

Residential Tenancy Branch