



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC

Introduction

On October 19, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking to suspend or restrict the Landlord’s right to enter the rental unit pursuant to Section 70 of the *Act*, and seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*.

At the outset of the hearing, the Tenant requested an adjournment as she had experienced significant personal issues recently in her life and consequently, she was not prepared to represent herself adequately. The Landlord’s agent was not prepared to acknowledge the Tenant’s request. Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. As this hearing pertains to a notice to end the tenancy, I find that adjourning the hearing would be prejudicial to the Landlord. As such, I did not allow the Tenant’s request for an adjournment. However, the Tenant was allowed to call an advocate and attend the hearing on her behalf as well.

The Tenant attended the hearing and had D.C. attend the hearing as her advocate. E.K. attended the hearing as agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by hand on October 22, 2018 and E.K. confirmed receipt of this. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that she did not submit any documentary evidence into this file. E.K. advised that his documentary evidence was mistakenly submitted online using the Tenant's code; however, it was clear that this evidence was submitted on behalf of the Landlord. He stated that the evidence was served to the Tenant and she acknowledged receiving it approximately two and a half weeks ago. As the service of this evidence complies with Rule 3.15 of the Rules of Procedure, I have accepted the Landlord's evidence when rendering this decision.

During the hearing, the parties were advised as per Rule 2.3 of the Rules of Procedure, that claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's One Month Notice to End Tenancy for Cause, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

All parties agreed that the tenancy started on January 5, 2012 and rent was currently established at \$350.00 per month, due on the first day of each month. A security deposit of \$175.00 was also paid.

E.K. stated that he served the Notice to the Tenant by posting it to her door on October 9, 2018 and the Tenant confirmed receipt of this. The reasons E.K. served the Notice are because the “Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant of the landlord.”, the “Tenant has engaged in illegal activity that has, or is likely to: damage the landlord's property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.”, and a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The effective date of the Notice was November 30, 2018.

E.K. submitted that an inspection of the rental unit was conducted on October 2 and October 3, 2018. It was discovered that the Tenant was engaging in “drug related criminal activity” and that the dining table appeared to be a drug preparation area that was covered in drug paraphernalia. In addition, there were burn marks on the tablecloth and a significant area of the table was covered in ash.

Moreover, it was noted, in conjunction with an inspection report completed by a Fire Inspector, that the Tenant's belongings were piled amongst the rental unit in a manner that would be considered a greater risk of being a fire hazard. The Fire Inspector also noted that “There is also evidence of illegal drug activity from the drug paraphernalia lying on the table and visible burn marks on the tablecloth, as well as lighters found on the floor with dirty ashtrays.”

E.K. also submitted that the Tenant is responsible for ensuring that the rental unit meets health, cleanliness, and sanitary standards. However, the Tenant maintained large piles of clothing, did not wash any floors that were exposed, there were full ashtrays throughout the living room, and the kitchen counters and stove top were piled with various items. E.K. submitted pictures and a copy of the inspection report to document the actual condition of rental unit. The Fire Inspector also noted in his report that “there

is an elevated fire hazard due to the increasing fire load from all of the combustible material piled and thrown around.”

E.K. referenced pictures and other documents submitted as documentary evidence to support justification for the reasons cited on the Notice.

The Tenant stated that she has lived in the rental unit for seven years without any written warnings and that she always keeps the rental unit clean. She advised that she went to the fire department and the Fire Official who inspected her rental unit told her that it was ok to have her belongings in boxes, so she complied. She stated that the drug paraphernalia that the Landlord referenced belong to her, that she is awaiting legalization of marijuana before she uses those items, and that she does not smoke in the rental unit. The Tenant submitted that the tablecloth was her mother's and she contends that the burn marks that the Landlord noted were actually holes torn by her mother's cat. Finally, she advised that she has been drug free for eight months, that she has all the drug tests to prove this, and that the Landlord's suspicions of drugs being used in the rental unit are based on speculation.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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:

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

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

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

When reviewing the totality of the evidence before me, I do not find the Tenant's testimony that she always keeps the rental unit clean to be consistent with the pictures the Landlord submitted. Furthermore, I find it reasonable to conclude based on the pictures of the dining room table that the items on the table are more likely than not being used in the rental unit and that this supports the Fire Inspector's findings in his report. Consequently, I find that the use of these items within the rental unit, in addition to the Tenant's belongings being kept in piles around the premises supports the argument that there is an elevated fire hazard risk. As such, I am satisfied that the Landlord has provided substantial evidence to support his claims that the Tenant's actions have seriously jeopardized the health or safety or a lawful right or interest of the Landlord, and thus, the Notice was justified.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

Based on the totality of the evidence, I am satisfied that the Tenant's behaviour jeopardized the tenancy and that this provided a basis and justification for the Landlord ending this tenancy. Ultimately, I dismiss the Tenant's Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. As such, I grant an Order of Possession that is effective **two days after service of this Order** on the Tenant.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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: January 10, 2019

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON January 10, 2019
AT THE PLACES INDICATED BY UNDERLINING OR USING ~~STRIKETHROUGH~~.