



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 26, 2018 (the "Application"). The Tenant applied for more time to extend the time limit established by the *Residential Tenancy Act* (the "Act") to make an Application for dispute resolution to obtain an order cancelling a One Month Notice to End Tenancy for Cause, dated November 13, 2018 (the "One Month Notice"), pursuant to the *Act*.

The Tenant as well as the Landlord's agent L.B. attended the hearing, each providing a solemn affirmation at the beginning of the hearing.

The Tenant testified that he served L.B. in person with the Application and documentary evidence package on November 27, 2018. L.B. acknowledged receipt. L.B. stated that she served the Tenant with her documentary evidence on December 29, 2018, which was confirmed by the Tenant.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). 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 *Residential Tenancy Act (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 is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to more time to allow the Application for Dispute Resolution, pursuant to Section 66 of the *Act*?
2. Is the Tenant entitled to an order cancelling One Month Notice, pursuant to Section 47 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

Both the Tenant and L.B. testified that the tenancy began on June 1, 2016. Rent in the amount of \$805.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 which the Landlord currently holds. Both parties submitted a copy of the tenancy agreement in support.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice on the following bases:

“Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.”

Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.”

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant.”

“Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

“Tenant has assigned or sublet the rental unit/site without the Landlord’s consent.”

L.B testified that she served the One Month Notice dated November 13, 2018 with an effective vacancy date of December 31, 2018, in person to an adult who appears to be residing at the rental unit on November 13, 2018.

The Tenant testified that he was out of the province at the time of the One Month Notice being issued to his roommate. The Tenant did not disagree with the date of service. The Tenant provided a flight itinerary confirming his departure on November 13, 2018 and his arrival November 19, 2018.

The Tenant stated that he did not learn about the One Month Notice until November 20, 2018. The Tenant made his Application on November 26, 2018.

L.B. testified the One Month Notice dated November 13, 2018 was in response to four main areas of concern;

First, L.B. states that the Tenant has an air conditioning unit attached to his window which is an eye sore and is not permitted at the building. In response, the Tenant indicated that the temperature in his suite has exceeded 38 degrees in the summer months and an air conditioner is required. The Tenant further stated that he has had the air conditioner unit installed for the past three years and it has never come up as an issue until lately.

Second, L.B testified that the Tenant also has a Barbeque on his patio which contradicts their agreement and building rules. The Tenant stated that this concern has been previously discussed and found to be a non-issue.

Third, L.B. indicated that the Tenant has failed to maintain general cleanliness outside of his suite, stating that there are cigarette butts all over the ground. The Tenant minimizes the amount of mess described and stated that the wind blows the cigarette butts onto his front patio which is located on the ground level.

Lastly, and most importantly, L.B testified that it appears as though the Tenant has a roommate living in his rental unit. The roommate is unknown to L.B. and appears to have access to the suite. L.B. is concerned as this roommate is not named on the tenancy agreement between the parties and is also not permitted according to the agreement.

L.B indicated that she has served the Tenant with three warning letters in September, October and November 2018, advising the Tenant that he has failed to comply with a material term of the tenancy according to Article (6) of the agreement which only allows one occupant to reside in the rental unit. L.B. stated that the Tenant does not have the Landlord's permission for an additional occupant.

The Landlord submitted a copy of a letter dated October 9, 2018, stating that the Tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the Landlord's written permission as required by Section 34. The notice gave the Tenant two weeks to comply with the agreement to avoid a notice to vacate the unit.

The Tenant responded and confirmed that he has had a roommate for the past six to eight months. He also confirmed receiving caution letters regarding the roommate. The Tenant states that the Landlord has approached him requesting that he sign a new agreement to include the roommate, which would also increase the amount of rent owed to the Landlord each month. The Tenant stated that he did not feel it was right to increase the rent, and refused to sign a new agreement.

The Tenant stated that he has had other roommates in the past and it has never been an issue with the Landlord.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Landlord served the One Month Notice in person on November 13, 2018, by leaving it with the Tenant's roommate. Section 88(e) of the *Act* outlines that documents such as the One Month Notice can be served on a person by leaving a copy at the person's residence with an adult who apparently resides with the person.

In this case, the parties agreed the One Month Notice was received by the Tenant's roommate, who is an adult and lives with the Tenant. Accordingly, I find the One Month Notice dated November 13, 2018 was sufficiently served for the purposes of the *Act*.

Section 47(4) of the *Act* provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. Further, section 47(5) of the *Act* confirms that failure to dispute the notice in the required time period results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice, December 31, 2018,.

In this case, I find the Tenant's roommate received the One Month Notice on November 13, 2018. It would have been the roommate's responsibility to notify the Tenant of the One Month Notice. I find the Tenant had until November 23, 2018 to submit an Application for dispute resolution or accept that the tenancy will end on December 31, 2018.

The Tenant did not dispute the One Month Notice until November 26, 2018. I find that the Application was made outside of the 10 days permitted under Section 47(4) of the *Act*.

The Tenant has applied for more time to file his Application. Pursuant to Section 66 of the *Act*, the director may extend a time limit established by the *Act* only in exceptional circumstances.

The Tenant indicated that he only learned about the Once Month Notice upon his return from a trip on November 19, 2018. I find the Tenant, after returning from his trip, still had until November 23, 2018 to submit an Application for dispute resolution.

I find that there is insufficient evidence before me to support an exceptional circumstance preventing the Tenant from making an Application within the time limits set out in Section 47(4) of the *Act*. It would have been the roommate's responsibility to notify the Tenant of the One Month Notice as it impacts them both. For these reasons I dismiss the Tenant's Application for more time.

I find the Tenant was out of time to dispute the One Month Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, December 31, 2018.

In light of the above, I dismiss the Tenant's Application to cancel the One Month Notice, without leave to reapply.

When a Tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a Landlord. Having reviewed the One Month Notice, submitted into evidence by the Tenant, I find it complies with section 52 of the *Act*.

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

Pursuant to section 55(1) of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the tenant fails to comply with the order of possession it may be filed in 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 17, 2019

Residential Tenancy Branch