



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, RP, LAT, OLC, LRE

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord, the landlord's agent and the tenant's agent (the tenant) 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.

While I have turned my mind to all the documentary evidence, including the testimony of all parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was sent to them by registered mail on December 06, 2018. The landlord also acknowledged receipt of the tenant's evidence which was sent to them by registered mail on January 02, 2019. In accordance with section 88 and 89 of the Act, I find that the landlord is duly served with the Application and the tenant's evidence.

The tenant acknowledged receipt of the landlord's evidence which was personally served on December 23, 2018. In accordance with section 88 of the Act, I find that the tenant is duly served with the landlord's evidence.

Preliminary Matters

At the outset of the hearing it was established that the tenant selected the wrong option when applying to dispute the notice to end tenancy. I have amended their Application for Dispute Resolution (the Application) to dispute a Two Month Notice for Landlord's Use of Property (the Two Month Notice) pursuant to section 49 of the *Act*, in accordance with section 64 (3)(c) of the *Act*.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notices to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenant's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

The tenant acknowledged receipt of a Two Month Notice and a One Month Notice on November 30, 2018. In accordance with section 88 of the *Act*, I find the tenant is duly served with the Two Month Notice and the One Month Notice on November 30, 2018.

Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should the One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord provided written evidence that this tenancy commenced on December 01, 2017, with a current monthly rent of \$680.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$300.00 and that the pet damage deposit in the amount of \$200.00 remains outstanding. The tenancy agreement was signed on May 29, 2018, and the pet damage deposit is noted as due on June 01, 2018. The tenant testified that a tenancy existed previous to this tenancy in a different rental unit with the same landlord.

A copy of the landlord's signed Two Month Notice dated November 30, 2018, was entered into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by February 01, 2019, the landlord cited the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

A copy of the landlord's signed November 30, 2018, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by January 01, 2019, the landlord cited the following reasons:

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.*
- *put the landlord's property at significant risk*

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to damage the landlord's property.

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

On the Details of Cause section the One Month Notice states that the tenant has not paid pet damage deposit, the dog is destroying the property that that the tenant is disobeying the rules of the tenancy by smoking in the rental unit.

The tenant entered into written evidence:

- Various pictures of damaged property at the rental unit, including a door that the tenant indicates was caused by the landlord's agent and a picture of a broken window which has written on it that the landlord punched it in; and

- A copy of a non-smoking agreement signed by the landlord and the tenant on May 30, 2018.

The landlord entered into written evidence:

- A copy of a statement regarding the landlord's son moving into the rental unit;
- A copy of a picture of the tenant smoking in their rental unit;
- A copy of a witness statement regarding the tenant smoking in their rental unit and being drunk on numerous occasions; and
- A copy of a note from the landlord's doctor indicating that the landlord has asthma and the tenant has been apparently smoking in the rental unit which is especially bad for asthmatics and has resulted in the requirement of more of her asthmatic medicines.

The landlord testified that the tenant is smoking in their rental unit which is against the rules of the tenancy and is impacting the landlord's health. The landlord submitted that the tenant signed their acknowledgement of the non-smoking rule. The landlord stated that the tenant uses the oven to light their cigarettes which puts their property at significant risk.

The landlord stated that the tenant broke a window into the rental unit to gain access when they had forgotten their key. The landlord testified that the tenant damaged the door after being given the notices to end the tenancy. The landlord submitted that the tenant has not paid their pet damage deposit, which was agreed to in the tenancy agreement that was provided in evidence.

The landlord's agent stated that the tenant smokes in the house and that their dog is causing extraordinary damage in the rental unit.

The tenant's agent stated that the tenant had just knocked on the window too hard and did not intend on breaking it. The tenant's agent indicated that the tenant uses their hot plate in the rental unit to light their cigarettes due to the landlord taking the tenant's lighters away.

The tenant's agent submitted that it was the landlord's agent who kicked in the door of the rental unit as she was on the phone with the tenant when it occurred and that she called the police at that time.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on December 04, 2018, and since I have found that the One Month Notice was served to the tenant on November 30, 2018, I find that the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*. I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Having reviewed the evidence and affirmed testimony, based on a balance of probabilities, I find that the tenant is continuing to smoke in their rental unit when they have signed their acknowledgement that smoking is not permitted. I accept the landlord's evidence and testimony that the tenant's smoking is seriously jeopardizing the health of the landlord due to the second hand smoke from the tenant's rental unit.

Residential Tenancy Policy Guideline #31 indicates that a landlord may require a pet damage deposit either when the tenant has a pet at the start of the tenancy or later, at the time a tenant acquires a pet and the landlord's required agreement is obtained.

Section 47 (1)(a) allows the landlord to end the tenancy if the tenant does not pay the pet damage deposit within 30 days of the date that it is required to be paid under the tenancy agreement.

Having reviewed the evidence and affirmed testimony, and in the absence of any evidence or testimony from the tenant indicating otherwise, I accept the landlord's submission that the tenant has not paid the pet damage deposit. As the pet damage deposit was agreed to be paid by the tenant on June 01, 2018, in the tenancy agreement and the One Month Notice was served on November 30, 2018, I find that this is more than 30 days from the date that the pet damage deposit was required to be paid by the tenant.

For the above reasons, I find that the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. Therefore, I dismiss the Application to set aside the One Month Notice dated November 30, 2018, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the One Month Notice complies with section 52 of the *Act* and, for the above reasons; I grant a two (2) day Order of Possession to the landlord.

As this tenancy has ended for cause, I dismiss the tenant's Application to cancel the Two Month Notice, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord **effective two days after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises 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 29, 2019

Residential Tenancy Branch