



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT
SERVICE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. The tenant confirmed that no documentary evidence was submitted. Both parties confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on January 24, 2019. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and any submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?
Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2011 on a fixed term tenancy ending on June 30, 2012 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 9, 2011. The monthly rent began as \$1,100.00 payable on the 1st day of each month. A security deposit of \$200.00 was paid.

On December 13, 2018, the landlord served the tenant with the 1 Month Notice dated December 13, 2018 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of January 15, 2019 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- the tenant has not done required repairs of damage to the unit/site.

The listed details of cause states:

During an argument between the tenant and a family member the window of unit 309 was broken back on May 13th, 2018, which has still not been repaired to date (December 13th, 2018). Further to this there have been multiple police incidences, involving violent interactions between the tenant and his family members.

During the hearing the landlord's agent confirmed that reason # 4 and #5 (listed below) were selected in error and wished to cancel these from the 1 month notice.

- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord claims that an “altercation” or incident occurred on May 13, 2018 between the tenant and a family member. The tenant confirmed this stating that it was his son. The landlord stated that as a result of this incident a window was broken inside. The tenant confirmed that a window was broken. The landlord stated that over the course of many months, the tenant was given verbal instructions to repair the window at his cost or that an end to the tenancy could result. The landlord also stated that 3 notice(s) were given to the tenant to repair the window on May 20, 2018, November 1, 2018 and December 18, 2018. The landlord stated that the end result is that the tenant has still not repaired the window. The tenant confirmed the verbal and written notice(s) given by the landlord, but argued that the window could not be fixed and had to be replaced as per his communications with various tradespersons. The landlord argued that this is not possible as they had also fixed/replaced other windows in the building over the last few years without incident. The landlord stated that each time the landlord made a request for the tenant to fix/replace the window the tenant would provide an excuse not to.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties and find that the landlord did properly serve the tenant with the 1 month notice dated December 13, 2018.

Discussions with both parties also clarified that the end of tenancy date would be corrected to January 31, 2019 and that this would not invalidate the notice.

The tenant has argued that he has tried but has been unable to fix/replace the window according to various communications with tradespersons. The landlord has argued that this is not the case and stated that other windows in the building have been fixed/replaced without incident.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the tenant has argued that he has tried, but has been unable to fix/repair the broken window. This was disputed by the landlord. I find on a balance of probabilities based upon the submitted direct testimony of both parties that it is highly unlikely that a window could not be fixed/repared within the last 7 months since May 13, 2018 when the window was broken. I find that the landlord has

established sufficient grounds for this reason for cause. As such, I find that is unnecessary to hear the remaining landlord's reasons for cause.

The tenant's application to cancel the 1 month notice dated December 13, 2018 is dismissed. The 1 month notice is upheld. The landlord is granted an order of possession effective 2 days after the tenant(s) are served.

Conclusion

The tenant's application is dismissed. The 1 month notice dated December 13, 2018 is upheld. The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: February 04, 2019

Residential Tenancy Branch