



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT, OPN, FFL

Introduction

This hearing involved cross applications made by the parties. On January 3, 2019, the Tenant made an Application for Dispute Resolution 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 an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On January 3, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for a Tenant’s Notice to end the tenancy pursuant to Section 45 of the *Act* and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and both Landlords attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that a Notice of Hearing package was served to the Landlords by hand in early January 2019 and the Landlords confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served with the Notice of Hearing package.

He also advised that his evidence was served to the Landlords by placing it in their mailbox on or around February 2, 2019. The Landlords confirmed receipt of this package on February 5, 2019, and they stated that they had reviewed it and were prepared to respond. While service of the evidence did not comply with the time frame requirements of service under Rule 3.14 of the Rules of Procedure, as the Landlords were prepared and could respond to the evidence, I have accepted this evidence and will consider it when rendering a decision.

The Landlords advised that a Notice of Hearing package and evidence was served to the Tenant by hand on January 9, 2019 and the Tenant confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package and evidence.

All parties 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.

Issue(s) to be Decided

- Is the Tenant entitled to cancel the Notice?
- Is the Tenant entitled to an Order that the Landlord comply?
- Is the Tenant entitled to recover the filing fee?
- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

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

All parties agreed that the tenancy started on November 1, 2018 as a co-tenancy. Rent was established at \$2,600.00 per month and was due on the first of each month. A security deposit of \$1,300.00 was paid. The tenancy agreement was submitted into evidence corroborating these details.

The Landlords advised that the co-tenant provided written notice to end the tenancy on December 6, 2018. As well, the co-tenant served the Landlord an Ending a Fixed-Term Tenancy Confirmation Statement form citing that she was ending the co-tenancy under Section 45.1 of the *Act* due to family violence as per Section 39 of the *Residential Tenancy Regulations* (the "*Regulations*"). They submitted copies of these documents as evidence of the tenancy ending. They explained to the Tenant that the co-tenant had ended the tenancy in accordance with the *Act*, subsequently ending the tenancy for the Tenant as well; however, the Tenant did not agree. They advised the Tenant in writing that they would allow him to stay in the rental unit until January 31, 2019. They stated that the Tenant only paid \$300.00 towards January 2019 rent and did not pay February 2019 rent at all. The co-tenant had vacated the rental unit on or around December 15, 2018. They advised that they were not willing to enter into a new tenancy with either tenant.

The Tenant was not informed that the co-tenant had ended the tenancy in this manner and he did not agree as it was his belief that the co-tenant had ended the tenancy maliciously, spuriously, or under false pretenses. He submitted into documentary evidence statements from other parties confirming his suspicions regarding the co-tenant's intention to end the tenancy. He questioned why the co-tenant would return to the rental unit multiple times if she vacated for

her safety. He confirmed that he only paid \$300.00 towards January 2019 rent. The Tenant speculated that the co-tenant and Landlords were conspiring and would enter into a new tenancy once he left.

The Tenant also confirmed that he was not served a One Month Notice to End Tenancy for Cause. As such, I have dismissed this portion of the Tenant's Application.

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.

Section 44 of the *Act* outlines the ways a tenancy can end and one of those methods is due to family violence under Section 45.1. This Section allows a tenancy to be ended in this manner if a person, who is authorized under the *Regulations*, has assessed the co-tenant's circumstance and makes a statement confirming the details of the situation and uses the approved form.

Furthermore, Section 45.3 of the *Act* indicates that if a co-tenancy is ended in this manner, the remaining tenants must also vacate the rental unit unless a new tenancy agreement is reached with the Landlord.

Section 39 of the *Regulations* outlines the persons that may make a family violence confirmation statement and subsection (h) includes "a registered nurse who is authorized by the British Columbia College of Nursing Professionals to practice nursing."

While the Tenant's submissions pertain to why the co-tenant ended the tenancy and the validity of her reason, the issue that I must consider is whether the co-tenant ended the tenancy in accordance with the applicable Sections of the *Act*. When reviewing the totality of the evidence before me, I have a tenancy agreement signed between the Tenant, the co-tenant, and the Landlords and an Ending a Fixed-Term Tenancy Confirmation Statement form signed by the co-tenant and a third-party verifier who qualifies as a person, as per the *Regulations*, who may make this family violence confirmation statement.

As the documentation submitted appears to comply with the Sections of the *Act* and *Regulations* pertaining to a tenancy ending due to family violence, I am satisfied that the tenancy has been ended by the co-tenant. Consequently, as per Section 45.3 of the *Act*, as the co-tenancy was ended in this manner, and as the Landlords are not willing to engage in a new tenancy agreement with the Tenant, I am satisfied that the Tenant must also vacate the rental unit. As such, I find that the Landlords are entitled to an Order of Possession pursuant to Section 45 of the *Act*.

As the Tenant was unsuccessful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain this from the security deposit if they so choose.

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlords **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: February 13, 2019

Residential Tenancy Branch