



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEWIS APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) dated February 15, 2019, and to request a Monetary Order for compensation for losses or money owed. The matter was set for a conference call.

Two Property Managers (the “Landlord”), the Tenant, and three witnesses attended the hearing and were each affirmed to be truthful in their testimony. They were each provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matters- Related Issues

I have reviewed the Tenant’s application, and I note that she has applied to cancel a Notices to end tenancy as well as for a Monetary Order for loss or other money owed. I find that the request for a monetary order is not related to the Tenant’s request to cancel the Notices. As this matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for a Monetary Order for loss or other money owed. I will proceed with this hearing on the Tenant's claim to cancel the One-Month Notice for cause.

Preliminary Matters- Evidence

At the outset of the hearing, the Tenant testified that the Landlord had served a second evidence package to her the day before these proceedings.

When asked, the Landlords testified that they had not served any evidence to the Tenant yesterday, and that they had only served one evidence package on the Tenant and that it has been served within the required timeline.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure states the following:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing

I have reviewed the Landlords' evidence package and confirmed with the Tenant that she had the same evidence that I had before me in these proceedings, including four witness statements. The Tenant also confirmed that this evidence had been served to

her in the Landlord's first evidence package that had been received by the Tenant with sufficient time for her to prepare a response.

Therefore, I find that the Landlord's documentary evidence that I have before me was served in compliance with the rules of procedure and is admissible in these proceedings.

The Tenant remained concerned that a second evidence package that was served to her late would be used against her in these proceedings and that she had no time to prepare a response to this second evidence package.

The Landlord again denied serving a second evidence package to the Tenant and testified that the Tenant was making a false claim against them.

I confirmed with the Tenant that I did not have the second evidence package, that the Tenant was referring, in evidence before me and that therefore it could not be used against her.

However, as the Tenant remained distressed, I requested that the Tenant advise me, during these proceedings, that if at any point, she heard that documentary evidence included in this second evidence package was disused during the testimony from the Landlord. The Tenant agreed that she would advise this arbitrator if that were to happen.

At no time during these proceeding did the Tenant raise any objection to the documentary evidence referred to by the Landlord during their testimony.

Preliminary Matters- Service of Notice

At the outset of the hearing, the Tenant testified that the Landlord had serviced the Notice to End Tenancy to the Tenant by sliding it under the front door of the rental unit. The Tenant testified that the Landlord had not served the Notice in an approved method but did acknowledge receipt of the Notice on February 15, 2019.

The Landlord testified that the notice had been served to the Tenant by sliding it under the front door of the rental unit.

Section 88 of the *Act* set the requirements on how documents are to be served.

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

While sliding the Notice under the front door of the rental unit does meet the service requirements under section 88 of the *Act*, I find that the Tenant was sufficiently served for the purpose of the *Act*, in accordance with section 71, on February 15, 2019, as the Tenant acknowledges receipt of the Notice on that date.

Issues to be Decided

- Should the Notice issued on February 15, 2019, be cancelled pursuant to section 47 of the *Act*?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on May 22, 2018, and that the Tenant pays rent in the amount of \$700.00. The parties also agreed that the Tenant paid a \$350.00 security deposit and a \$350.00 pet damage deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Landlord served the Notice to end tenancy to the Tenant on February 15, 2019. The Property Manager provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Notice states that the Tenant must move out of the rental unit by March 31, 2019. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has been causing problems at the rental property and that she has been spoken to several times regarding her behaviour towards other residents of the rental property. The Landlord testified that she had received numerous verbal and four separate written complaints regarding the Tenant's behaviour throughout the rental complex. The Property Manager submitted copies of two written warnings and four letters of complaint regarding the Tenant into documentary evidence.

The Landlord testified that the Tenant had tossed garbage and other Tenant's personal belongings on to common areas of the property and on to balconies other rental units, that the Tenant has taken the personal property of another occupant and that the Tenant wanders the halls of the rental property yelling and threatening other occupants of the rental complex. The Landlord also testified that the Tenant has repeatedly knocked on the front doors of her neighbours' rental units, demanding that they let her in or talk to her and that the Tenant will refused to stop knocking even after being told to go away.

Additionally, the Landlord testified that she had received several verbal complaints that the Tenant has been yelling and swearing at her neighbours in the rental complex and that the Tenant's behaviour has created a stressful, and unfriendly environment throughout the rental complex.

The Landlord testified that she issued the first written warning to the Tenant on September 30, 2018, advising the Tenant that she was in breach of her tenancy agreement due to her behaviour and that any further breach would result in a termination of her tenancy.

The Landlord testified that she received another complaint regarding the Tenant behaviour and issued a second written warning on February 8, 2019, stating that she would be issuing the Notice to end the tenancy after received that complaint.

The Landlord also provided two witnesses to testify during these proceedings. The first witness, K.E. testified that the Tenant had taken her personal property and throw it away on her and that when she asked the Tenant about it, the Tenant had spit on her. Additionally, the witness testified that she works as the janitor for the building and that the Tenant is constantly harassing her while she is working and has threatened to kill her.

The Landlord second witness S.B. testified that the Tenant had thrown garbage from her balcony on to his area and that when he told her to stop the Tenant told him that it was her dog that had done it. The witness then testified that later the same day he found the Tenant sitting on his private patio area having a smoke.

The Tenant's testified that all the claims being made against her are false and that all the people who are complaining about her, each get a reduction in their rent as they work for the Landlord.

The Tenant's witness D.U., who is the Tenant's neighbour, testified that he had personally not seen the Tenant behave in an inappropriate way towards himself or towards anyone else in the building.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

Landlord's notice: cause

47 (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

I accept the testimony of the Tenant that she received the Notice, on February 15, 2018. Pursuant to section 47(8) the *Act*, the Tenant had 10 days to dispute the Notice. Consequently, the Tenant had until February 25, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. I have reviewed the Tenant application for dispute resolution, and I find that the Tenant filed her application on February 25, 2019, within the legislated timeline.

I have carefully reviewed the testimony of the parties, the witnesses and the documentary evidence that I have before me in this case. I find the four written complaints from neighbours of the Tenant to be a credible account of the disturbance caused by the Tenant on the rental property. I also find that the other occupants of the rental property would have been disturbed by the actions and behaviour of the Tenant.

For the reason stated above, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenant's application to cancel the Notice issued on August 30, 2018.

I find the Notice dated February 15, 2019, is valid and enforceable. Section 55(2b) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant application to dispute the Notice has been dismissed.

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's application to cancel the Notice, issued on February 15, 2019, is dismissed. I find the Notice is valid and complies with the *Act*.

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: April 15, 2019

Residential Tenancy Branch