



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNC, MNDCT, OLC, FFT
Landlord: OPC, MNDCL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant’s Application for Dispute Resolution was made on February 28, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice for Cause;
- a monetary order for damage or compensation;
- an order for the landlord to comply; and
- an order granting the recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on March 3, 2019, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for Cause;
- a monetary order for damage or compensation; and
- an order granting the recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the scheduled date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on March 6, 2019. The Landlord confirmed

receipt. The Landlord testified that he served the Tenant with his Application by registered mail on March 7, 2019. The Landlord stated that he served addition evidence packages by registered mail on March 19, 22, and April 1, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 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 Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement or the *Act*.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, and an order for the landlord to comply are dismissed with leave to reapply. Similarly, the Landlord's request for a monetary order for money owed or compensation for damage or loss is also dismissed with leave the reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice to End Tenancy for Cause (the "One Month Notice") dated February 22, 2018, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 47 and 55 of the *Act*?

Background and Evidence

Both parties testified and agreed that the tenancy between the parties began on June 1, 2018. Rent in the amount of \$2,100.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,050.00 which the Landlord continues to hold. A copy of the tenancy agreement was submitted in support.

The Landlord testified that he received notification from the building manager that the Tenant has been operating a short term vacation rental out of the rental unit which is contrary to the building strata bylaws which could result in fines. The Landlord testified that he sent the Tenant an email on September 4, 2018 stating that operating the short term vacation rental was an infringement of the strata bylaw as well as a breach of the tenancy agreement between the parties.

The Landlord stated that the Tenant responded by email on September 5, 2018 accepting responsibility for operating the short term vacation rental and stated that she would no longer operate the short term vacation rental and that she removed her ad. The Landlord submitted a copy of the email exchange between the parties.

The Landlord testified that since cautioning the Tenant on September 4, 2018, he has received numerous complaints from other residents in the building as well as from the building manager indicating that they continue to witness short term vacation rental guests attending the rental unit. The Landlord testified that one witness statement indicates that the witnesses conversed with a guest who stated that he was there on vacation and booked the Tenant's rental unit online. The Landlord stated that he has incurred strata fines in relation to the Tenant continuing her short term vacation rental in the rental unit. The Landlord submitted witness statements in support.

The Landlord testified that he has located the Tenant's short term vacation rental account which advertises the Tenant's rental unit. The Landlord provided a copy of the ad in support. The Landlord testified that there have been 5 guest reviews left on the Tenant's profile left between January and February 2019, further confirming that the Tenant continues to operate the short term vacation rental. One of reviews even mentions the Tenant by first name.

For the above mentioned reasons, The Landlord stated he served the Tenant in person with the One Month Notice on February 22, 2019 with an effective vacancy date of

March 31, 2019. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"Tenant has allowed an unreasonable number of occupants in the unit/site"

"The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk"

"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."

In response, the Tenant confirmed that she had been operating a short term vacation rental in the rental unit. After receiving the Landlord's email on September 4, 2018, she states that she terminated her short term vacation rental ad. The Tenant denies that she is still operating the short term vacation rental and that the groups of people who attend her suite are friends and family who visit her regularly.

Analysis

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

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant in person with a One Month Notice dated February 22, 2019 on the same date. The One Month Notice has an effective vacancy date of March 31, 2019. The Tenant confirmed having received the notice on February 22, 2019. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, the Landlord has submitted several witness statements from other occupants in the building stating that they continue to witness guests attending the rental unit for short term vacations stays. Furthermore the Landlord has provided a copy of the short term rental ad which indicates that the Tenant has continued renting her rental unit to guests on a short term rental basis. The Landlord continues to incur strata fines as a result.

According to the Residential Policy Guideline 19 (the "Policy Guideline") if a tenant is allowing their rental unit or space within their rental unit to be used for a commercial venture, such as a vacation or travel accommodation, a landlord may issue a One Month Notice to End Tenancy for a breach of a material term. I find that it is more likely than not that the Tenant has continued to operate the short term vacation rental in the rental unit which is a breach of a material term of the tenancy.

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 Landlord, I find it complies with section 52 of the Act.

The parties agreed that the Tenant has not yet paid rent when due to the Landlord for April 2019. As such, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

As the Landlord was successful with his Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which he may deduct from the Tenant's security deposit.

Conclusion

The Tenant has breached a material term of the tenancy agreement. 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: April 17, 2019

Residential Tenancy Branch