



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord attended with her spouse C.R., who was also named by the tenant on his Application as a landlord in this matter.

Preliminary Issue – Amendment of Tenant's Application

The tenant requested to amend his application to remove C.R. as a named landlord to this dispute. The tenant referenced the written tenancy agreement which only documented the landlord J.R. and the tenant as named parties to this tenancy. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's Application to remove C.R. as a named landlord and party to this hearing.

Preliminary Issue – Service of Documents

As both parties were present, service of documents was confirmed. The tenant testified that he served the landlord with the Notice of Dispute Resolution Proceeding package by Canada Post registered mail on April 12, 2019, which was confirmed received by the landlord. Based on the undisputed testimonies of the parties, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

The tenant testified that he served his documentary evidence on the landlord by Canada Post registered mail on May 5, 2019, which was confirmed received by the landlord on May 10, 2019.

The landlord testified that she served her documentary evidence to the tenant by Fedex with signature required, on May 13, 2019 but that the package was refused to be accepted by the recipient. The landlord submitted a copy of the shipment summary which included the tracking number into evidence. During the hearing, I accessed the Fedex tracking website and confirmed that the package was noted as “refused by recipient”. The landlord also testified that she left a box with her evidence for the tenant at his rental unit door. The tenant confirmed that the landlord left a box at the rental unit door with some evidence but did not believe it was the complete evidence package.

Both parties uploaded evidence to the Residential Tenancy Branch dispute website late. I advised both parties I would not consider any evidence not submitted within the time limits set out in the Rules of Procedure.

Preliminary Issue - Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant’s Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord’s Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was submitted into documentary evidence by both parties. The written tenancy agreement set out that this month-to-month tenancy began December 15, 2018 and required payment of monthly rent of \$1,100.00 on the first day of the month.

The tenancy also required that the tenant to pay a security deposit of \$500.00 and a pet damage deposit of \$500.00 by January 1, 2019.

Both parties confirmed that the tenant paid the \$500.00 security deposit, which the landlord continues to hold, but only paid \$100.00 of the pet damage deposit. The tenant confirmed that he currently has three cats residing with him at the rental unit.

The tenant asserted that he had performed work for the landlord by cleaning up the yard, in exchange for waiving the requirement to pay the remaining \$400.00 of the pet damage deposit. The tenant testified that this was a verbal agreement with the landlord and that he had no evidence of this agreement, such as text messages or emails that would support his testimony.

The landlord disputed the tenant's assertion and testified that there was no such verbal agreement and that she had been waiting for the remainder of the pet damage deposit to be paid. In support of her testimony, the landlord referred to a text message conversation between the landlord and the tenant on February 5, 2019, in which she asked the tenant when the rest of the deposit would be paid. The tenant responded that he did not "have any money right now". The text message exchange continued with the landlord requesting a payment arrangement for the rest of the deposit and the tenant responding to explain his financial difficulties, to which the landlord agreed to allow the tenant more time to pay the deposit until he was in a better financial situation. As the pet damage deposit remained unpaid, the landlord issued the tenant a One Month Notice on March 28, 2019.

A copy of the One Month Notice, submitted into evidence, stated an effective move-out date of April 30, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has (check all boxes that apply):

- *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.*

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.*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord also completed the "Details of Cause" box and attached an additional four pages detailing the reasons for issuing the One Month Notice.

The landlord testified that the One Month Notice was personally served to the tenant on March 28, 2019, which was confirmed received by the tenant on that day.

The tenant filed an Application for Dispute Resolution on April 7, 2019 to dispute the Notice.

The parties provided further testimony regarding their own version of events pertaining to the other grounds noted on the One Month Notice and the circumstances around police involvement between the parties. However, this testimony was not recounted in this section as it was not relevant to the reasons for the decision in this matter as explained in the following section of this decision.

Analysis

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

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.

The tenant was in receipt of the landlord's One Month Notice on March 28, 2019. The tenant filed an application to dispute the notice on April 7, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

In this matter, the landlord selected several grounds on the One Month Notice for ending the tenancy, however, the landlord is only required to provide sufficient evidence on a balance of probabilities to prove one of the grounds in order to obtain an Order of Possession pursuant to section 55 of the *Act*.

One of the grounds for the landlord issuing the One Month Notice is on the basis that the tenant failed to pay \$400.00 of the required pet damage deposit of \$500.00 within 30 days of January 1, 2019, which was the date it was required to be paid. The landlord referred to text messages between the parties to substantiate her claim that she requested payment of the full pet damage deposit from the tenant.

In the tenant's own words during the hearing, he confirmed that he did not pay the landlord the outstanding \$400.00 for the pet damage deposit and that he did not have any evidence to support his claim that there was a verbal agreement with the landlord to waive the \$400.00 for yard work performed by the tenant.

Although both parties agreed that the tenant did not pay the landlord \$400.00 of the outstanding pet damage deposit, the parties provided conflicting testimony regarding a verbal agreement allowing the tenant to waive payment of the pet damage deposit for work performed by the tenant.

While it is always difficult to reconcile conflicting versions of events, without any corroborating evidence to support the tenant's version of events, I find that I prefer the landlord's testimony in this matter, as it is supported by a text message exchange between the landlord and the tenant which referenced a request by the landlord to the tenant for payment of the outstanding pet damage deposit and the tenant explaining his financial difficulties as the reason for not being able to make the payment. As well, I note that this text message exchange is dated February 5, 2019, which is past the 30-day time limit provided by the *Act* for payment of the pet damage deposit.

As such, I am unable to find that a verbal agreement existed which allowed the tenant to perform yard work in exchange for payment of \$400.00 towards the pet damage deposit. Therefore, I find that \$400.00 of the \$500.00 pet damage deposit remained unpaid as of the date of the hearing.

As such, based on the testimony and evidence before me, on a balance of probabilities, for the reasons explained above, I find that one of the grounds for the landlord issuing the One Month Notice has been proven. Therefore, the One Month Notice is of full force and effect, and the tenant's application is dismissed without leave to reapply.

Section 55(1) of the *Act* states that if a tenant makes an application to dispute a notice the arbitrator must grant an Order of Possession if the notice complies with the *Act* and the tenant's application is dismissed. As I have made a finding that the One Month Notice complies with section 52 of the *Act* and the tenant's application to the cancel the One Month Notice is dismissed, the landlord must be granted an Order of Possession.

The effective vacancy date of the notice has now passed. However, as the tenant's rent for the month of May 2019 has already been received by the landlord, this Order of Possession will be dated effective May 31, 2019 at 1:00 p.m. The landlord must serve the Order of Possession on the tenant as soon as possible.

Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective May 31, 2019 at 1:00 p.m. The landlord must serve this Order on the tenant as soon as possible. Should the tenant 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: May 29, 2019

Residential Tenancy Branch