



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M.A. CEDAR PLACE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), for an order requiring the landlord to comply with the Act, and for recovery of the filing fee.

The tenant and the named landlord and her assistants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, make submissions to me, and respond each to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the other's evidence.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

The parties were previously in dispute resolution on the tenant's application seeking cancellation of a previous landlord's 1 Month Notice. That application was granted as the landlord failed to attend the hearing, and that 1 Month Notice was cancelled.

Upon review, the 1 Month Notice at issue in the previous dispute resolution, which was provided in evidence, was dated February 1, 2019, and listed as causes seeking an end to the tenancy for the reasons that the tenant allegedly had an unreasonable number of occupants in the rental unit and that the tenant had assigned or sublet the rental unit without the landlord's consent. Shortly thereafter, the landlord served the tenant another 1 Month Notice, listing those two causes, along with others.

The parties were advised that due to the previous 1 Month Notice being cancelled, I would be unable to consider the above causes on the 1 Month Notice dated February 1, 2019.

The hearing proceeded on the additional, new causes listed by the landlord, more fully set out within this Decision.

Issue(s) to be Decided

- Should the 1 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

This written tenancy agreement shows that this tenancy began on February 1, 2016, monthly rent is \$1,675.00 and the tenant paid a security deposit of \$837.50, at the beginning of the tenancy. The rental unit was in a multi-unit building, with other tenants of the landlord.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the 1 Month Notice, pursuant to section 47 of the Act. The 1 Month Notice submitted into evidence shows that it was dated April 15, 2019, listing an effective end of tenancy date of June 1, 2019. The landlord submitted without dispute that the Notice was delivered to the tenant on that date, by attaching it to the tenant's door.

The additional, new causes listed on the 1 Month Notice which I will consider alleged the tenant is repeatedly late paying rent and that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health or safety or lawful right or interest of the landlord another occupant.

The landlord testified that the tenant is using her rental unit as a business, as she is renting it out on AirBnB and other short-term rental sites, which is in violation of the municipal bylaws. The landlord submitted the internet sites to the municipality regarding the restrictions as well as direct quotes from the municipality regarding short-term rentals.

The landlord submitted further that the local municipality requires all short-term rental operators to have a valid business licence and include it in on-line listings and advertisements. The bylaw goes on further to state that the landlord must permit the use of short term rentals in the operator's home before applying for a licence.

The landlord submitted that they have not given permission to the tenant to operate short term rentals and that each violation is subject to a fine of \$1,000.00.

The landlord submitted that they have previously advised the tenant that she was to stop using the rental unit as a business for short-term rentals, but that she has not stopped. The landlord submitted a copy of the text message to the tenant in this regard.

The landlord's additional relevant evidence included, but was not limited to, the on-line advertisements by the tenant, with descriptions, users' comments, audio conversations with the local municipality about the short-term rentals and requirements, photos and videos of the tenant assisting the short-term renters into the rental unit and photos of a short-term renter entering the rental unit.

It is noted that the tenant's advertisements advises potentials short-term renters that the rental unit would be "great for lifestyle photoshoots, small workshops, and SMALL photo/video lifestyle production". Also the advertisement lists that "LARGE-SCALE PRODUCTIONS: My space is still available to you, however please contact me to discuss".

Other advertisements by the tenant show that the rental unit had a two hour minimum rental and that the "day rate" applied to 8 hours.

Tenant's relevant response-

The tenant submitted she has had no complaints or negative feedback from other tenants in the building and has a good relationship with them.

The tenant submitted further that she has not moved out the rental unit and her personal property stays in the rental unit.

Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

Once the tenant disputed the 1 Month Notice in accordance with the timeline provided for pursuant section 47 of the *Act*, the burden of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled, and will have no force or effect.

In this instance, the burden of proof is on the landlord to prove the tenant is repeatedly late paying rent and that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health or safety or lawful right or interest of the landlord another occupant.

After considering all of the relevant evidence submitted for this hearing, I find that the landlord has provided sufficient evidence to prove at least one of the causes listed on the Notice.

Section 47 of the Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant has seriously jeopardized the lawful right or interest of the landlord.

The tenant has not disputed that she advertises her rental unit for photo shoots and small or large productions, on a minimum of a 2 hour and up to 8 hour basis. Further the landlord's evidence shows that the tenant in her on-line listings for the rental unit refers to herself as a "Host".

I find this is clear evidence that the tenant is using her rental unit to run a short-term rental business. There is no evidence that the tenant has applied for and received a business licence from the local municipality for running her short-term rental business, in violation of the local bylaw. Additionally, there is no evidence that the landlord has given the tenant permission to run this short-term rental business in her rental unit.

I find it reasonable that the landlord, as the owner of the property, is required to conform to the local bylaw and that the tenant is preventing the landlord from so doing, subjecting them to fines up to \$1,000.00 for each violation.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant has seriously jeopardized the lawful right or interest of the landlord.

As I have found that the landlord has proven at least one of the grounds for ending the tenancy listed on the 1 Month Notice, it was not necessary to make a finding on the other listed grounds.

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the 1 Month Notice valid, supported by the evidence, and therefore, enforceable.

As I have dismissed the tenant's application, I decline to award her recovery of the filing fee.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective **June 30, 2019, at 1:00 p.m.** as the parties confirmed that the tenant has paid the monthly rent for the month of June 2019.

The order of possession is attached with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

For the reasons stated above, the tenant's application is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective June 30, 2019.

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: June 7, 2019

Residential Tenancy Branch