



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SILVER BIRD HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDCT OLC LRE RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 1 Month Notice to End Tenancy for Cause dated April 25, 2019 ("1 Month Notice"), for a monetary claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order to set conditions on the landlord's right to enter the rental unit, site or property, and for a rent reduction.

The tenant MW, a co-tenant BS, a constituency assistant TD ("assistant"), a landlord agent GM ("agent"), and landlord witness RSS ("witness") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties at the start of the hearing. I have considered only the documentary evidence that was served in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). In addition, only evidence relevant to the issues and my findings below have been described in this decision.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month

Notice at this proceeding. I will determine whether the remainder of the tenant's application is dismissed or dismissed with leave to reapply later in this decision.

At the outset of the hearing, the tenant confirmed her maiden name was MM and pursuant to section 64(3) of the *Act*, I amend the application to reflect both names for the tenant.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties. In addition, if the landlord is entitled to an order of possession, that will be sent by email to the landlord with the decision.

Background and Evidence

The parties agreed that while a written tenancy agreement does not exist between the parties, a month to month tenancy began August 1, 2017. The parties agreed that monthly rent is \$1,200.00 and is due on the first day of each month.

The tenant confirmed receiving the 1 Month Notice on May 1, 2019. The tenant disputed the 1 Month Notice within the required 10 day timeline under section 47 of the *Act* by filing to dispute the 1 Month Notice on May 9, 2019. The 1 Month Notice states the following causes:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
5. Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The tenant continues to occupy the rental unit. The landlord is seeking an order of possession and does not wish for the tenancy to continue. The parties confirmed that money for use and occupancy has been paid by the tenants for June 2019.

The landlord submitted three letters from three occupants of the building, all of whom complain about the tenant smoking cigarettes and marijuana that is emanating into their rental unit and the pub located above the tenant. The pub manager, RSS (“witness”) provided affirmed testimony that the tenant entered the pub yelling that her food order was incorrect and would not leave, resulting in the tenant eventually threatening the witness that she was going to “throw the fish in her fucking bitch face”. The witness also states that the tenant’s cigarette and marijuana smoke negatively impacts pub customers and is supported by a letter submitted in evidence.

The witness was questioned by the assistant on cross-examination and was asked if there was any witnesses to the yelling/threat to throw food incident described above, to which the witness replied yes; in addition to the cook, there was two customers K and P, and two others TM and JS. The assistant had no further questions for the witness. The tenant later denied saying those words to the pub manager; however, admitted that she threatened to throw food at the pub manager.

One of the letters is from a neighbour of the tenant who clearly indicates the negative impact the tenant’s smoking is having on her enjoyment of her rental unit and that she has tried taping up areas where smoke could enter from the tenant’s unit, with no success as the smoke continues to enter. During the hearing the tenant confirmed that she continues to smoke in her rental unit and claims that the smoke escapes her rental unit due to a hole in the floor.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice – The landlord issued a 1 Month Notice dated April 25, 2019, which the tenant confirmed receiving on May 1, 2019. The tenant disputed the 1 Month Notice on time by filing an application on May 9, 2019.

Based on the evidence before me, I find the landlord has provided sufficient evidence to support 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. I have reached this finding by considering that the tenant admitted to yelling at the pub manager about her food and threatened to throw the food at the pub manager. Threatening to throw food at and yelling at another occupant is not reasonable behaviour and I find is grounds for eviction. In addition, I find the tenant provided no

supporting evidence that she has used a HEPA filter or other smoke mitigation process to prevent her smoking from negatively impacting other occupants. I find the three letters submitted by the landlord to be compelling and of significant weight. I afford little evidentiary weight to the allegation that the tenant has a hole in her flooring due to insufficient evidence presented and would not change the fact that the tenant failed to use some form of smoke mitigation as the tenant did not dispute the complaints about her smoking behaviour leading up to the 1 Month Notice.

Therefore, based on the above I find the 1 Month Notice is valid and **I dismiss** the tenant's application to cancel the 1 Month Notice. I uphold the 1 Month Notice issued by the landlord with the effective vacancy date of June 1, 2019, as it is valid.

I find the tenancy ended on June 1, 2019.

Given the above, I dismiss the remainder of the tenant's application, other than the monetary claim, without leave to reapply as the tenancy has ended. Section 55 of the *Act* applies and states:

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.**

[Emphasis added]

Pursuant to section 55 of the *Act*, and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I must grant the landlord an order of possession once I have dismissed the tenant's application to dispute the 1 Month Notice or have upheld the 1 Month Notice. Therefore, I grant the landlord an order of possession **effective June 30, 2019 at 1:00 p.m.**

I find it was not necessary to consider the remaining causes listed on the 1 Month Notice or the remainder of the application as the tenancy has ended.

Conclusion

The tenant's application fails and is dismissed without leave to reapply, due to insufficient evidence, with the exception of the monetary claim, which is dismissed with leave to reapply.

The 1 Month Notice is upheld and the tenancy ended on June 1, 2019.

The landlord has been granted an order of possession effective June 30, 2019 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2019

Residential Tenancy Branch