



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNC OLC
 Landlord OPC FF

Introduction

This hearing was convened in response to cross-applications under *the Residential Tenancy Act* (the Act) by the landlord and the tenant. The tenant applied to cancel a notice to end tenancy for cause and for the landlord to comply with the Act in respect to the landlord's right to access. The landlord applied for an order of possession pursuant to a notice to end tenancy for cause and to recover the filing fee. The tenant and landlord each participated in the teleconference hearing.

At the outset of the hearing both parties confirmed receiving the evidence of the other. Despite the abundance of evidence, I have reviewed all testimony and admissible evidence that is relevant to this proceeding, and only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Should the notice to end be cancelled, and if so is the landlord entitled to an order of possession?

Should the landlord be ordered to comply with the Act in respect to their right to enter pursuant to Section 29 of the Act?

Is the landlord entitled to recover their filing fee?

Background and Evidence

The relevant evidence is as follows. The tenancy started March 01, 2019 as a written tenancy agreement of which I have benefit of a copy of the agreement and agreed testimony of the parties as to the particulars of the agreement. The contractual agreement terms are for a payable monthly rent of \$1200.00 and a payable security

deposit of \$600.00. The parties were in contrast respecting the agreed arrangement for payment of the above. The tenant claims the parties agreed the landlord would accept future earnings for rent and the security deposit from working in the landlord's business (a salon). The parties testified at length about their deteriorating employment and personal relationship, but that ultimately the sole disagreement between the parties centred around the issue of the security deposit. Both parties agreed that the tenant has not paid the \$600.00 security deposit as identified within the tenancy agreement. The tenant claims that at the outset of the tenancy the landlord waived the requirement of the \$600.00 security deposit in exchange for work, with which the landlord disagreed. The parties acknowledged they did not commit any oral agreement(s) to paper.

In June 2019 the landlord gave the tenant a hand-written narrative that they were seeking to sell the rental unit. The tenant now claims that it is evidence of an ulterior motive of the landlord. On August 14, 2019 the landlord served the tenant with two (2) one month notice to end tenancy for cause. One notice indicates the reason for ending the tenancy as per Section 47(1)(a) (the first notice to end): *the tenant has not paid the security deposit within 30 days of the date required to be paid*. The second notice to end tenancy for cause as per Section 47(1)(c): *there are an unreasonable number of occupants in the rental unit*. The landlord claimed that a third occupant in the rental unit was not listed in the tenancy agreement.

The landlord did not advance evidence in support of the second notice to end.

The landlord and tenant concurred with the tenancy agreement submitted into evidence that the contract required a security deposit of \$600.00. The parties agreed the security deposit has never been paid. The landlord and tenant disagreed about how the security deposit was to be satisfied and whether it was to be paid.

The tenant testified that that the landlord's version of events is not truthful. They claim the landlord had agreed to waive or ignore payment of the security deposit in lieu of paid work.

The tenant further claims that the landlord had entered the rental unit unannounced at which time the tenant was naked. The landlord did not effectively dispute this portion of the tenant's claim and questioned how it was possible for it to occur.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I find that in this type of matter if a tenant disputes a landlord's Section 47 notice to end tenancy the landlord issuing the notice has the burden to prove the notice is valid and grounded in sufficient cause. I find that in respect to the first notice to end pursuant to **Section 47(1)(a)**, the parties agree that the tenancy agreement states that a security deposit of \$600.00 was payable at the outset of the tenancy and that to date it has not been paid. The parties are at opposite ends surrounding the tenant's version of events. I find it must further be known that within Section 47 of the Act there does not exist a *good faith requirement* in respect to issuing a notice to end tenancy for cause. In this matter I find that in the presence of the written agreement and in absence of evidence to support a superseding agreement, the evidence is that the tenant did not pay a security deposit as required by the written contractual agreement. Therefore, I find that the landlord has provided sufficient evidence to support their burden. As a result, I must effectively **dismiss** the tenant's application.

Section 55(1) of the Act states that if I dismiss the tenant's application or uphold the landlord's Notice to End I must grant the landlord an Order of Possession if the landlord's Notice to End tenancy complies with Section 52 [*form and content of notice to end tenancy*] of the Act. I find the landlord's Notice to End complies with the form and content required by **Section 52** of the Act and in that respect is valid. Therefore, having dismissed the tenant's application I must grant the landlord an Order of Possession.

Having determined this matter based on the above notice to end I make no findings based on the second notice to end.

As the effective date of the Notice to End (September 30, 2019) has passed,

I grant the landlord an Order of Possession **effective 2 days from the day it is served** on the tenant. The tenant must be served with this Order of Possession however it must be known that the landlord has some discretion as to when they serve the Order. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that I am not satisfied by the landlord's response to the tenant's allegation the landlord abused their right to enter the rental unit. As a result,

I Order the landlord to strictly comply with the prescribed provisions as set out in **Section 29** of the Act respecting their limited right to enter the rental unit, until this tenancy is at a complete end.

As the landlord applied to recover their filing fee and were in part successful in their application, they are entitled to recovery it from the tenant.

I grant the landlord an Order under Section 67 of the Act for the amount representing the landlord's filing fee of **\$100.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application to cancel the landlord's notice to end is dismissed.

The landlord is ordered to comply with Section 29 of the Act.

The landlord's application is granted in the above terms.

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: October 16, 2019

Residential Tenancy Branch