



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPN, FFL

Introduction

This hearing dealt with The Landlord's Application for Dispute Resolution was made on October 15, 2019, (the "Landlord's Application"). The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the "Act"):

- an order of possession for cause;
- an order of possession based on the Tenants' Notice to End Tenancy; and
- an order granting the recovery of the filing fee.

The Landlord's Agents, L.U. and O.B., the Tenant, and the Tenant's advocates E.S. and L.L., attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord's Agents testified that they served the Landlord's Application and documentary evidence package to the Tenants by registered mail. The Tenant confirmed receipt. I find that the above mention documents were sufficiently served, pursuant to Sections 88 and 89 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 parties attended a previous hearing on November 7, 2019 relating to the Tenants' Application to cancel a Notice to End Tenancy for Cause. During the previous hearing, the parties agreed that the Tenants would have an opportunity to clean the rental property to a reasonable standard by November 12, 2019, and that the notice to end tenancy would be dealt with during the hearing on November 15, 2019. The parties were permitted to provide photographic evidence of the rental property in support which was accepted.

At the start of the hearing, the Landlord's Agents testified that they were not satisfied with the cleaning job done by the Tenants and requested that the hearing continue based on the Landlord's Application for an Order of Possession for Cause. In response, the Tenant stated that he felt as though he complied with the Landlord's request for the yard to be left reasonably clean and has met the requirements set out by the City. As such, the Tenant wished to cancel the One Month Notice. The hearing continued to determine the following;

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice for Cause dated September 25, 2019 (the "One Month Notice"), pursuant to Section 47 of the *Act*?
2. If the Tenants are not successful in cancelling the One Month Notice, is the Landlord entitled to an order of possession, pursuant to Section 47, 55 of the *Act*?
3. Is the Landlord entitled to an Order of Possession in relation to the Tenants' Notice to End Tenancy, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2005. Currently, the Tenants are required to pay rent in the amount of \$1,832.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$725.00.

The Landlord's Agents testified that they served the Tenant with a One Month Notice on September 25, 2019, with an effective vacancy date of October 31, 2019, by placing it through the mail slot at the dispute address. The Tenant confirmed having received the

One Month Notice on the same date. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The Landlord's Agents stated that the One Month Notice was served to the Tenants in relation to the clutter found in the Tenants' yard. The Landlord's Agents stated that the clutter is unsightly and that the Tenants have been warned several times to clean up the yard. The Landlord's Agents stated that the Tenants were served with formal written notice on August 7, 2019 regarding the Tenants' non compliance regarding the requirement to maintain a clean yard. The Landlord's Agents stated the Landlord is seeking to end the tenancy as a result.

The Tenant denied having receiving written notice from the Landlord regarding the clutter in the yard. The Tenant stated that he had a verbal discussion with the Landlord's Agent in early September 2019 who requested that the Tenant clean the yard prior to an inspection that would take place on September 30, 2019. The Tenant stated that he received the One Month Notice on September 25, 2019 prior to him having an opportunity to comply. The Tenant stated that he has since made the yard reasonably clean and intends to maintain it as such.

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 with a One Month Notice to End Tenancy for Cause dated on September 25, 2019 with an effective vacancy date of October 31, 2019, by placing it through the mail slot at the dispute address. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, the Landlord has submitted an Application for an Order of Possession based on a One Month Notice to End Tenancy, pursuant to Section 55 of the Act.

I note that Section 55 of the Act states that in order for a Landlord to be granted an order of possession, the Landlord's notice to end tenancy must comply with Section 52 of the Act relating to form and content.

Section 52 of the Act States; In order to be effective, a notice to end a tenancy must be in writing and must;

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy,***
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

I find that the Landlord served the Tenant with a One Month Notice and selected the reason for the Notice is;

“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

The One Month Notice also contains a “Details of Cause” section which provides the Landlord and opportunity to outline the details surrounding the reason for Cause. This also provided the Tenants with an understanding as to why they are being served a Notice to End Tenancy. In this case, I find that the Landlord has not provided any information which would support the One Month Notice being served.

I find the One Month Notice does not comply with Section 52 of the Act. In light of the above, I cancel the One Month Notice, dated September 25, 2019. I order that the tenancy continue until ended in accordance with the Act.

The Landlord has also applied for an Order of Possession based on the Tenants' Notice to End Tenancy. I find that the Landlord's Agent made no mention to this during the

hearing and that the Landlord provided no evidence in support of the Tenant's indicating that they wished to end their tenancy. During the hearing the Tenants expressed their interests in continuing the tenancy. As a result, I dismiss this portion of the Landlords claim without leave to reapply.

As the Landlord was not successful in their Application, I find that they are not entitled to the recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed. The One Month Notice issued by the Landlord dated September 25, 2019 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: November 15, 2019

Residential Tenancy Branch