



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC LAT

Introduction

This hearing was held based on the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 1 Month Notice to End Tenancy for Cause dated November 15, 2019 (1 Month Notice) and for authorization to change the locks to the rental unit.

The tenant and an agent for the landlord PR (agent) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were advised that the hearing was a Review Hearing, which is a new hearing of the original application.

By way of background, on January 14, 2020, the original decision was rendered by a different arbitrator as the tenant did not attend the hearing, and as a result, the landlord was granted an order of possession. On February 5, 2020, a different arbitrator granted a Review Hearing, after the tenant applied for a Review Consideration and was granted a Review Hearing on the grounds that the tenant could not attend the hearing for reasons beyond the control of the tenant. The Review Hearing was scheduled for this date, April 14, 2020 at 9:30 a.m. Pacific Time. The parties had the dispute resolution process explained to them and were provided with the opportunity to submit documentary evidence prior to this hearing, to provide testimony and to make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure (Rules) and that was presented; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant

indicated two matters of dispute on one 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. The balance of the tenant's application is dismissed, with leave to re-apply.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2017 and reverted to a month to month tenancy after June 30, 2017.

The tenant testified that they were served a couple days after the 1 Month Notice was dated. The 1 Month Notice is dated alleging one cause. The cause as listed in the 1 Month Notice indicates the following:

1. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The tenant disputed the 1 Month Notice on November 22, 2019, which is within 10 days of being served with the 1 Month Notice on November 16, 2019. I have used November 16, 2019, as the tenant wrote that date in their application as the date the 1 Month Notice was received. The effective vacancy date on the 1 Month Notice is listed as December 31, 2019, which has passed.

The landlord referred to incidents listed on the 1 Month Notice that led to the issuance of the 1 Month Notice. The first issue relates to a fire in the rental unit, which in the landlord's documentary evidence indicates that the fire department investigator advised the agent that the fire was on the counter inside the rental unit by "unknown causes". The agent stated that he was told the tenant must have caused the fire; which the tenant denied.

The second issue relates to the tenant changing the rental unit locks without writer permission and failing to remove their lock and reinstall the original lock after two written warnings to do so.

The agent stated that the first warning letter regarding the rental unit locks was dated September 6, 2019 and that the second warning letter regarding the same matter was dated September 17, 2019. The agent stated that due to the tenant refusing to change their locks back to the original locks, on October 3, 2019, the landlord had a locksmith change the rental unit lock back to the original lock.

The tenant responded by stating that the agent was not working at the time of the fire and that the tenant and his friend were asleep and awoke to the fire and that he should be a hero for catching the fire so quickly and that more damage did not occur. The tenant also claims that the incident report is wrong and that the fire occurred near the window by a heater.

Regarding changing the locks without permission, the tenant stated that they are pretty sure there is someone with a master key and that due to someone accessing their rental unit, they changed the locks without permission. The tenant claims that they were not aware that they could have file for dispute resolution for authorization to have the locks changed and instead changed them without the permission of the landlord.

While there is no dispute that the tenant offered a key to the landlord, the agent stated that the key was not accepted as the locks must be keyed to the master key to ensure the landlord has access to all rental units in case of a fire, flood or other emergency.

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 to End Tenancy for Cause – Firstly, regarding the cause of the fire, I find the evidence from the landlord is insufficient to support that the tenant was the cause of the fire as the landlord's own documentary evidence states that the fire investigator stated, "unknown causes". As a result, I will now deal with the lock issue before me. There is no dispute that the tenant changed the rental unit locks without written permission and failed to comply with two written warnings to have the locks changed back to the original locks.

Firstly, I find the response of the tenant to changing the locks to be unreasonable by stating they were “pretty sure” that someone else had a master key to the building. I do not find the statement “pretty sure” to be compelling and offer it no weight. Secondly, I find it more likely than not that by changing the locks to the rental unit created significant risk for the landlord’s property as a fire did occur just weeks after the landlord had the locks changed on October 3, 2019. Therefore, I find the landlord has met the burden of proof by providing sufficient evidence to support the cause listed on the 1 Month Notice and therefore, I dismiss the tenant’s application and uphold the 1 Month Notice. Therefore, based on the above, I find the landlord has met the burden of proof by proving that the tenant put the landlord’s property at significant risk.

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]

Given the above and considering that I find that the 1 Month Notice complies with section 52 of the *Act* and that the effective date of the 1 Month Notice, December 31, 2019, has passed, I grant the landlord an order of possession effective **five (5) days after service on the tenant**. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. I have used five days on the order of possession given the current state of emergency related to COVID-19 and *Ministerial Order M089*, which can be found via this link:

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089.

Pursuant to section 82(3) of the *Act*, I set aside the original decision dated January 14, 2020, and dismiss the tenant’s application due to insufficient evidence, without leave to reapply.

Conclusion

Pursuant to section 82(3) of the Act, the original decision dated January 14, 2020 has been set aside. I dismiss the tenant's application due to insufficient evidence, without leave to reapply. I uphold the 1 Month Notice dated November 15, 2019. I find the tenancy ended December 31, 2019, which was the effective vacancy date listed on the 1 Month Notice.

The landlord has been granted an order of possession effective five (5) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. Given the current state of emergency, the parties are encouraged to review *Ministerial Order M089* at the link provided above.

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: April 15, 2020

Residential Tenancy Branch