



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT

Introduction

On July 23, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) Issued on July 9, 2020, and for more time to dispute the Notice. The matter was set for a conference call.

The Landlord’s Agent and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

Issues to be Decided

- Is the Tenant entitled to more time to file to dispute the Notice?
- Should the Notice issued on July 9, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that the tenancy began on December 15, 2020, and that the Tenant currently pays rent in the amount of \$853.17 per month. The parties also agreed that the Tenant paid a \$325.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Notice shows that the Landlord served the Notice to end tenancy to the Tenant on July 9, 2020, by posting the Notice to the front door of the rental unit. Both parties submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- *Tenant or 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 or the Landlord*

The Notice states that the Tenant must move out of the rental unit by August 31, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that they had difficulty completing an application online to dispute the Notice and that due to COVID-19, it took them a while to secure an Advocate to assist them with their application.

The Landlord testified that they would not dispute the Tenant being given additional time to file their application to dispute this Notice.

The Landlord testified that the Notice was issued due to several complaints they received from other occupants of the rental property regarding the Tenant, and the

Tenant's guests behaviour on the property. The complaints were that the Tenant had several load gatherings in the rental unit, one in which the Tenant was arrested after due to the assault of a female guest. The Landlord provided a copy of a written final warning letter they issued to the Tenant regarding appropriate conduct, on April 22, 2020. The Landlord provided copies of three complaints and the written warning into documentary evidence.

The Landlord also testified that on June 14, 2020, the building was evacuated due to the Tenant. The Landlord testified that the Tenant had allowed food to burn on the stove in their rental unit, and that the burning food had been left on the stove long enough to set off the building fire alarm.

The Landlord testified that when the fire department gained access to the rental unit, it was noted that the Tenant had deactivated the fire alarm for the rental unit. The Landlord testified that the Tenants actions of removing the fire alarm in their rental unit was a significant safety risk to the building and all the other occupants living on the rental property.

The Tenants agreed that they had removed the fire detector from the wall, stating that they had removed it because the noise bothered them. The Tenant also testified that they would not speak about the events that lead to their arrest, on the advice of their attorney.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants received the Notice to End Tenancy on July 12, 2020, three days after it had been posted to the front door of the rental unit, pursuant to the deeming provision set out in section 90 of the Act.

Section 47 of the Act gives a tenant ten days to dispute a Notice issued pursuant to that section, stating the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenants had until July 22, 2020, 2018, to file their application to dispute this Notice. I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed their application on July 23, 2020, one day late.

In this case, the Tenant has requested more time to file their dispute of the Notice - pursuant to section 66 of the Act. The Act allows for an extension of time; however, that extension may only be granted if the party requesting the extension has proof that an exceptional circumstance has occurred that prohibited them from filing their application within the statutory time limit.

Director's orders: changing time limits

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59

(3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

The Tenant testified that they required additional time to file due to difficulties they encountered filing their application online and finding an advocate during the COVID-19 pandemic. I agree that exceptional circumstance have been created, throughout our communities, due to the current COVID-19 pandemic, and that those exceptional circumstance may affect an applicant's ability to file a dispute on time. Therefore, I find that there is sufficient reason to grant the Tenant request for additional time to file their dispute of this Notice.

As for the Notice, I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case. I accept the agreed-upon testimony of these parties that the Tenant did remove the fire detector from their rental

unit. I find that the Tenant's actions of removing the fire detector created a significant security risk for the Landlord and the other occupants of the rental property.

For the reason stated above, I find that the Tenant has adversely affected the security, safety or physical well-being of another occupant or the Landlord. Consequently, I dismiss the Tenants' application to cancel the Notice issued July 9, 2020.

Section 55(1) of the Act 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.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than **1:00 p.m. on August 31, 2020**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's application to cancel the Notice, issued July 9, 2020, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on August 31, 2020**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 28, 2020

Residential Tenancy Branch