



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC-MT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for more time to apply to cancel that Notice.

This teleconference hearing was scheduled to commence at 1:30 p.m. on this date. The Agent for the Landlord and the building manager were present at the start of the hearing. The Agent for the Landlord stated that she spoke with the Tenant earlier today, at which time she provided the Tenant with the telephone number and access code needed to join the teleconference.

By the time the teleconference was concluded at 1:50 p.m., the Tenant had not appeared.

The representatives for the Landlord were given the opportunity to present relevant oral evidence and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to set aside the One Month Notice to End Tenancy for Cause?

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Tenant applied to cancel the One Month Notice to End Tenancy for Cause, dated December 31, 2020, which the Tenant submitted in evidence. The reasons cited on the One Month Notice to End Tenancy for Cause are that the Tenant has allowed an unreasonable number of occupants in the unit and the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time. The One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by January 31, 2021.

The Agent for the Landlord stated that:

- The tenancy began on December 01, 2019;
- The rent is due by the first day of each month;
- On December 31, 2020 the aforementioned One Month Notice to End Tenancy for Cause was posted on the door of the rental unit;
- The rent at this unit is subsidized;
- The written tenancy agreement was served to the Landlord as evidence for these proceedings;
- The Tenant is required to disclose her household income for the purposes of determining whether she is entitled to subsidized housing, in accordance with sections 8, 10(c), and 10(d) of the tenancy agreement;
- The Tenant's eligibility for subsidized housing is dependant on the composition of the household, as stated in section 13(a) of the tenancy agreement;
- Only the people listed on the tenancy agreement are permitted to reside in the rental unit, as stated in section 13(b) of the tenancy agreement;
- Any change in household income and/or occupancy is material to the tenancy and may result in the Tenant no longer qualifying for subsidized housing, as stated in section 13(c) of the tenancy agreement;
- Within a few months of the tenancy beginning, the Landlord learned that the Tenant's boyfriend was residing in the rental unit, which is only 325 square feet;
- The Tenant has breached a material term of the tenancy agreement because the rent subsidy is based on occupancy and total household income and the Tenant does not qualify for subsidized housing with two persons living in the unit;
- The Landlord provided the Tenant with written notices on April 14, 2020, July 21, 2020, November 09, 2020, and December 07, 2020, in which the Tenant was advised she was breaching the tenancy agreement by having her boyfriend living in the unit;
- The boyfriend is still living in the rental unit;

- The Landlord has tried to correct this breach, without success; and
- The Tenant has entered into another tenancy agreement with the Landlord for a different rental unit, which is to commence on April 15, 2020.

Analysis

Section 47(1)(h) of the *Act* authorizes a Landlord to end a tenancy, by providing proper notice, if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

On the basis of the undisputed evidence, I find that a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on December 31, 2020, which declared, in part, that the tenancy was ending pursuant to section 47(1)(h) of the *Act*.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the One Month Notice to End Tenancy for Cause on January 02, 2021.

Residential Tenancy Branch records show that on January 11, 2021 the Tenant filed this Application for Dispute Resolution, in which she disputed the One Month Notice to End Tenancy for Cause. As this Application for Dispute Resolution was filed within 10 days of the date the Tenant is deemed to have received the One Month Notice to End Tenancy for Cause, I find that she filed it within the timeline established by section 49(4) of the *Act*. As the Tenant filed the Application for Dispute Resolution within the required timeline, I find that it is not necessary for me to determine whether the Tenant should be granted more time to apply to cancel the One Month Notice to End Tenancy for Cause.

As the Tenant did not attend the hearing in support of her application to cancel the One Month Notice to End Tenancy for Cause, I find that she did not diligently pursue the Application for Dispute Resolution and I dismiss the Application, without leave to reapply.

On the basis of the testimony of the Agent for the Landlord and the tenancy agreement submitted in evidence by the Tenant, I find that household composition and income is a material term of this tenancy, as the subsidy for this rental unit is dependant on those matters. I further find that the Tenant breached a material term of the tenancy agreement when she permitted her boyfriend to live in the rental unit, as his occupancy renders the Tenant ineligible for this subsidized unit. I further find that the Tenant did not comply with several written requests to have her boyfriend move out of the rental

unit. I therefore find that the Landlord has grounds to end this tenancy, pursuant to section 47(1)(h) of the *Act*.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, I must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and I, during the dispute resolution proceeding, dismiss the tenant's application or upholds the landlord's notice. As I have dismissed the Tenant's application to cancel the One Month Notice to End Tenancy for Cause, the One Month Notice to End Tenancy for Cause complies with section 52 of the *Act*, and the Landlord has established grounds to end the tenancy pursuant to section 47 of the *Act*, I must grant the Landlord an Order of Possession.

As the Landlord has entered into a tenancy agreement with the Tenant for a different rental unit, which is to begin on April 15, 2021, I the Order of Possession will require the Tenant to vacate this unit by April 15, 2021.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. pm April 15, 2021. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: April 12, 2021

Residential Tenancy Branch