



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RP, LRE, PSF, OLC, MNRT, MNDCT, FFT
CNR, OLC, RR, MNRT, FFT

Introduction

This hearing dealt with two applications filed by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant also applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend. Both landlords attended the hearing via conference call and provided undisputed affirmed testimony.

The landlords were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

This matter was set for a conference call hearing at 11:00 a.m. on this date. The landlords confirmed that they were served with the tenant's applications for dispute and that they were aware of the listed issue(s). I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only persons who had called into this teleconference.

I waited until 10 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the two applications dismissed without leave to reapply. The tenant's applications were dismissed at 56 minutes past the start of the scheduled hearing time.

During the hearing the landlords requested that the 1 month notice to end tenancy issue for cause dated March 31, 2021 and the 10 Day Notice for Unpaid Rent dated June 24, 2021 be upheld. The landlords requested an order of possession and a monetary claim for unpaid rent of \$2,500.00 for July 2021.

As such, the hearing proceeded on this basis.

The landlords provided undisputed affirmed evidence that the tenant was served with the documentary evidence submissions for each of the files via Canada Post Registered Mail both on July 28, 2021. The landlords provided in their direct testimony the Canada Post Registered Mail Tracking numbers (listed on the cover of this decision) as confirmation of service.

I accept the undisputed affirmed evidence of the landlords and find that the landlords have provided sufficient evidence to satisfy me that they were served with each of the tenant's notice of hearing package(s) and that the landlord served the tenant with their documentary evidence via Canada Post Registered Mail as per section 71 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for cause?

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2020 on a fixed term tenancy until May 1, 2021 as per the submitted copy of the signed tenancy agreement dated November 30, 2020.

The monthly rent is \$2,500.00 payable on the 1st day of each month. A security deposit of \$1,250.00 was paid.

The landlords provided undisputed affirmed evidence that on March 31, 2021, the landlord served the tenant with the 1 Month Notice dated March 31, 2021 by placing it in the tenant's mailslot. The 1 Month Notice sets out an effective end of tenancy date of April 30, 2021 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The details of cause state:

On separate and on multiple occasions I and others have witnessed first-hand and spoken to multiple people living at the property who are unknown and are not on the tenancy agreement. On December 9, 2020 I spoke with a woman who was not he tenant, D.G. who sated she has been living on the property for one month til date. On December 20, 2020 I spoke with a man that was not the tenant, S.D. that was smoking on the front deck who stated he was also living on the property for two months til date. The tenants on the lease were specifically told on the day of signing that they are not allowed to sublet the property without explicit consent from the landlord. Consent was never granted to sublet the lease. I was informed by the tenant D.G. in November 2020, that she will be Airbnb the property, to which I denied and no permission was given. Furthermore there have been a number of complaints from the neighbors including a complaint made on December 21, 2020 of unreasonable number of people living on the property, noises and unreasonable disturbances to the neighbors caused by the tenants. A warning was issued. An inspector from the City of Vancouver notified us on March 25, 2021 that he received multiple complaints of late-night noises of louse music, yelling and illegal use of "firesticks" disrupting sleep at 1am in the morning. The inspector notified us, that such disturbances are an infraction of the noise control by-law. Your lease ends on the end of April 2021.

[reproduced as written]

The landlords provided undisputed affirmed evidence that they received two statements from neighbors that there is an unreasonable number of occupants in the rental unit. The landlords believe that there are more than 10 persons living/occupying the rental

unit. The landlord referred to two statements provided by neighbors on the south and the east side of the rental property. These statements state that the tenant is knowingly housing an unreasonable number of people with them; and that they regularly see 10 or more people late at night or in the early mornings as they congregate on the back-deck area.

The landlords provided undisputed affirmed evidence that they have received complaints from neighbors of the tenant hosting parties late at night; using firesticks; and trespassing on the neighbors property by stealing internet service by running a cable from the rental property to the neighbor's telecommunications box.

The landlords provided undisputed affirmed evidence that the tenant has sublet the rental unit without their consent. The landlords based upon the statement of neighbors attended the rental unit and verbally spoke to an unidentified woman who stated that she has been living at the rental property for a couple of months.

The landlords also provided undisputed affirmed evidence that a 10 Day Notice to End Tenancy for Unpaid Rent dated July 2, 2021 was served to the tenant by putting it in the tenant's mailbox on July 2, 2021. The 10 Day Notice states that the tenant failed to pay rent of \$2,500.00 that was due on July 1, 2021. The landlord referred to a submitted copy of a completed proof of service document that the 10 Day Notice was served. The landlords stated that no rent payments have been made by the tenant since the notice was served. The landlords seek an order of possession for unpaid rent and a monetary claim for \$2,500.00 in unpaid rent for July 2021.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, the tenant's application to cancel the 1 month notice was dismissed without leave to reapply for failing to attend and participate in the hearing. The landlords requested an order of possession and to uphold the 1 month notice for cause. I accept the undisputed affirmed evidence of the landlords that the 1 month notice was served to the tenant by placing it in the tenant's mail slot on March 31, 2021. The landlord provided undisputed affirmed evidence that the tenant had an unreasonable number of occupants totalling more than 10 people occupying the rental unit. The landlords submitted statements from neighbors which stated that confirmed the landlord's claims. The landlords provided undisputed affirmed evidence that multiple complaints from

neighbors were received of excessive noise caused by the tenant and her guests. The landlord provided undisputed evidence that the tenant was verbally cautioned that their tenancy was in jeopardy. The landlords stated that the tenant had sublet the rental property without their consent. The landlords provided undisputed affirmed evidence that an unidentified woman answered the rental unit door and stated that she was living in the rental unit for approximately a couple of months. I find based on this undisputed evidence of the landlord that the landlord has established a claim for all of the reasons for cause selected. The 1 month notice dated March 31, 2021 is upheld. The landlords are granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date has now passed.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find in this claim that the landlord did serve the tenant with the 10 Day Notice for Unpaid Rent dated July 2, 2021 by placing it in the tenant's mail slot. The tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply. The landlord has provided undisputed affirmed evidence that the tenant failed to pay rent of \$2,500.00 for July 2021 and has not paid any rent as of the date of this hearing. On this basis, I find that the 10 Day Notice dated July 2, 2021 is upheld. The landlords are granted an order of possession to be effective 2 days after it is served upon the tenant and a monetary order for unpaid rent of \$2,500.00.

Conclusion

The landlord is granted an order of possession based upon both notice(s) to end tenancy. The landlord is granted a monetary order for \$2,500.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those Courts. 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 10, 2021