



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC

Introduction

On April 11, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing, with S.W. attending as an advocate for the Tenant. R.L. and J.C. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Landlord’s Notice of Hearing package and the parties’ evidence was discussed, and the only issue with service of these documents is that the Landlord’s late evidence was not served to the Tenant. As such, I have accepted all parties’ documentary evidence and will consider it when rendering this Decision, with the exception of the Landlord’s late evidence. This late evidence will be excluded and not considered when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claim was dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on or around August 1, 2019, that rent was owed in the amount of \$1,720.00 per month, and that it was due on the first day of each month. A security deposit of around \$845.00 may have been paid. Neither party submitted a copy of the written tenancy agreement for consideration.

As well, they agreed that the Notice was served on April 2, 2023, by hand. The reasons the Landlord served the Notice were because the “Tenant has allowed an unreasonable number of occupants in the unit/site/property/park”, the “Tenant is repeatedly late paying rent”, and the “Tenant has not done required repairs of damage to the unit/site/property/park.” The effective end date of the tenancy was noted as May 2, 2023, on the Notice. However, that date is incorrect and will automatically self-correct to May 31, 2023, pursuant to Section 53 of the *Act*.

With respect to the reason of repeated late payment of rent, R.L. advised that he did not wish to make any submissions on this issue.

He then advised that the Tenant is the only person listed on the tenancy agreement, that it is a month-to-month tenancy, and that she has refused to amend the tenancy agreement to add additional parties onto the tenancy. He stated that the Landlord received complaints about multiple new people and families coming and going from the rental unit. He testified that the Landlord received an email from someone they did not know, asking for his security deposit back because he rented a room in the rental unit on a short-term basis. He stated that the Tenant agreed to give notice to the Landlord if she intended to assign or sublet the rental unit, but she never informed the Landlord when she did this. As well, he noted that the Tenant was warned not to have extra occupants staying in the rental unit. However, he stated that there have always been extra occupants living there despite this warning, and that she recently acknowledged as much.

He submitted that he has seen ads posted online for the rental unit in April and May 2023, while she and her kids live there as well. He stated that a computer is now setup outside, which demonstrates that there is not enough room inside the rental unit to accommodate whoever is living there. He referenced the documentary evidence submitted to support his position that the rental unit is full of random people.

J.C. advised that he would text the Tenant constantly about keeping stable roommates in the rental unit. He testified that he received a text on July 22, 2023, from the Tenant where she indicated that a friend of hers would be staying in the rental unit for a few months.

The Tenant advised that her current roommate has been living there for the past year and a half, and that there have never been more than six people living in the three-bedroom rental unit at one time. She testified that she received permission from J.C. on

July 17, 2019, to have extra occupants. She confirmed that recently, she had three other adults living there, in addition to her two children; however, one of these adults has another residence and only stays sporadically, while the other started living there full-time approximately a month ago. She confirmed that the person that contacted the Landlord for the return of his security deposit was a person that she had rented a room to.

R.L. advised that one of these adults has been living there for at least a year and a half, that he has a wife as well, and that the Tenant never let the Landlord know of this. As well, he testified that there are over 10 bicycles on the property, and that there is an excessive number of bins, luggage, baby seats, and other random items stored on the property and in the boiler room.

The Tenant advised that this male's wife lives in Alberta, and she only stays in the rental unit occasionally. As well, she stated that this male is not currently living in the rental unit. She believes she received permission for this person to reside in the rental unit, but she is not sure when she informed the Landlord that he would be staying there.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

- (b) the tenant is repeatedly late paying rent;*
- (c) there are an unreasonable number of occupants in a rental unit;*
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];*

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I note that the rental unit contains three-bedrooms and that the Tenant is the only person listed on the tenancy agreement. Furthermore, the Tenant has two children staying with her as well. While it appears as if the Landlord has permitted the Tenant to have occupants in the rental unit, I note that the Tenant already acknowledged renting to someone without the Landlord knowing about it, and she confirmed that she had advertised the rental unit in the past on an online site. Moreover, she confirmed that she has had multiple adults that are currently staying with her or have done so in the past, and there is little evidence that the Tenant has kept the Landlord informed of who has been coming or going from the rental unit.

When her vague and uncertain testimony of who has been living with her, and for how long, is combined with the documentary evidence of complaints of varying people living there over a long period of time, I find that this causes me to doubt the reliability of the Tenant's testimony. Furthermore, given the sheer amount of belongings stored inside and outside the rental unit, and given the picture of one bed that is depicted in the Landlord's evidence as being awkwardly forced into the middle of a room while being completely surrounded by the Tenant's excessive property, I find that this further causes me to doubt that there is not an unreasonable number of people occupying the rental unit.

Based on my assessment of the evidence before me, I prefer the Landlord's evidence on the whole as it is more consistent and reliable. As such, I am satisfied that the Landlord has sufficiently substantiated that the Tenant has allowed an unreasonable number of occupants to reside in the rental unit, and that these actions justified ending the tenancy.

As I am satisfied that there is sufficient compelling and persuasive evidence before me to support the issuance of this Notice, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, I grant the Landlord an Order of Possession that takes effect at **1:00 PM on August 31, 2023**, after service on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, the Landlord is provided with a formal copy of an Order of Possession effective at **1:00 PM on August 31, 2023**, after service on the Tenant. Should the Tenant or any occupant on the premises 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 3, 2023

Residential Tenancy Branch