



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, OPB, MND, MNSD, FF
 Tenant: CNC, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order and the tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and by the tenants.

At the outset of the hearing the tenants confirmed that they served the landlord with their Application for Dispute Resolution or their evidence via mail within this past week. The tenants filed their Application with the Residential Tenancy Branch (RTB) on September 15, 2011.

Issue(s) to be Decided

The issue to be decided is whether the tenants are entitled to cancel and disregard a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to an order of possession for cause and/or for breaching an agreement with the landlord; to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on May 18, 2011 for a month to month tenancy beginning on June 1, 2011 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid on May 18, 2011.

The tenancy agreement include terms indicating that the landlord may serve a notice to end the tenancy should there be an unreasonable number of occupants; prohibiting the tenant from having pets; and restricting smoking to outside only.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on September 10, 2011 with an effective vacancy date of October 31, 2011 citing the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk; the tenant has engaged in illegal activity that has or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, jeopardize a lawful right or interest of another occupant or the landlord; the tenant has caused extraordinary damage to the unit or property; the tenant has assigned or sublet the rental unit without landlord's written consent; and a security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that she understood she could not yet apply for her monetary order for any damage to the rental unit or to retain the security deposit as the tenants still had possession of the rental unit and the tenancy was still in effect.

Analysis

Section 59(3) of the *Act* states a person who makes an Application for Dispute Resolution must give a copy of the application to the other party within 3 days of making it. As the tenants did not serve the landlord with their Application until the week of October 10-14, 2011, I find the tenants failed to serve the landlord in accordance with the *Act*.

Normally, when an Application is dismissed based on a failure to serve the respondent I would grant leave to reapply. However, as the tenants' Application was based on a 1 Month Notice to End Tenancy for Cause the *Act* requires a tenant who wishes to dispute the notice to file their Application for Dispute Resolution within 10 days of receiving the Notice.

As the tenants received the Notice on September 10, 2011 the latest they would have been able to file an Application was September 30, 2011 and as this hearing was conducted well past that date, granting the tenants leave to reapply would have no effect as they have already missed the deadline.

Based on the above, the effect is that the tenants have failed to file an Application for Dispute Resolution to dispute the 1 Month Notice to End Tenancy for Cause. Section 47(5) states that if a tenant fails to file an Application the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

As a result, I dismiss the tenants' Application.

In light of this dismissal and based on the landlord's Application, I find the landlord is entitled to an order of possession. However, as noted by the landlord during the

hearing I find her Application for a monetary order and to retain the security deposit is premature as the tenancy as not yet ended. I dismiss this portion of the landlord's Application with leave to reapply.

Conclusion

I find the landlord is entitled to an order of possession effective **October 31, 2011 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit of \$425.00, in accordance with Section 72(2)(b), in satisfaction of this claim leaving a balance of \$375.00 in the security deposit held by the landlord.

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: October 14, 2011.

Residential Tenancy Branch