



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

A hearing was conducted by conference call in the presence of the respondent and in the absence of the applicant. The hearing was called at the scheduled start time. The Respondent was present but the applicant was not. I waited 10 minutes and recalled the matter. The applicant still had failed to contact the telephone conference call number. I proceeded in the absence of the applicant and in the presence of the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the one month Notice to End Tenancy dated February 26, 2014 was personally served on the Tenant on February 26, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated February 26, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written contract that provided that the tenancy would start on August 1, 2011 and end on July 31, 2012 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of

\$725 per month payable on the first day of each month. The parties subsequently agreed the tenant would pay an additional \$15 per month in consideration for the landlord ordering certain sports channels on the internet. The tenant paid a security deposit of \$400 at the start of the tenancy.

The landlord presented evidence of the tenant significantly interfering and unreasonably disturbing the upstairs tenant including:

- Partying into the early hours of the morning.
- Smoking cigarettes and marijuana (the tenancy agreement provides no smoking as a material term).
- Several warnings have been given.

The tenant continues to reside in the rental unit.

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act.

That section provides 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:

...
(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

....

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

.....

After considering the evidence presented at the hearing and in the absence of the applicant I determined the landlord has sufficient cause to end the tenancy.

Analysis

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The applicant failed to attend the hearing. The respondent was present and presented sufficient evidence to establish cause to end the tenancy. **I ordered that the tenant's application to cancel the one month Notice to End Tenancy be dismissed without liberty to re-apply.**

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request at the hearing. **As a result I granted the landlord an Order for Possession. The landlord testified the tenant has paid the rent for April and he accepted the payment "for use and occupation only." As a result I set the effective date of the Order for Possession for April 30, 2014.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 07, 2014

Residential Tenancy Branch

