



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fraser Marine Drive Holdings Inc Tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, OPC, MNDC

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on May 25, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order allowing more time to make the application to cancel a notice to end tenancy - Section 66.

The Landlord applied on June 2, 2016 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to more time to make the application to cancel the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on August 6, 2009. The building containing the rental unit was purchased by the Landlord in 2012. The Agent has no knowledge of the state of the building prior to this date. On April 29, 2016 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") with an effective date of May 31, 2016.

The Tenant states that he did not apply to dispute the Notice within the time required as he originally accepted that the tenancy would end. The Tenant states that he applied after being informed by an unidentified source that the Landlord could not evict the Tenant for failure to inform the Landlord of the presence of bugs.

The Landlord states that the reason for the Notice is that the Tenant failed to clean his unit of clutter reducing the effectiveness of the chemical treatments to the unit. The Landlord states that the Landlord was not able to carry out a heat treatment due to the clutter. The Landlord claims \$300.00 for the costs of the missed heat treatment due to the Tenant's clutter.

The Tenant agrees that his unit is cluttered and messy but states that it is not unsanitary. The Tenant states that the heat treatment was not carried out because the Tenant had placed all the bagged materials on his deck and there was no place for the heat treatment machine to be set up. The Tenant states that he was not informed of the need for a clear deck. The Landlord states that the treatment was not missed because of the balcony but because of the clutter inside the unit.

Analysis

Section 47 of the Act provides that a tenant may dispute a one month notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. If a tenant who has received this notice does not make an application for dispute resolution within this time the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice,

and must vacate the rental unit by that date. Section 66 of the Act provides that a time limit may be extended only in exceptional circumstances. While I can accept that the Tenant had a change of heart about disputing the Notice, regardless of the reason for the change, I do not consider this to be an exceptional circumstance, particularly when the application was made within days of the effective move-out date of the Notice. I find therefore that the Tenant is not entitled to an extension of time. As the application has not been made within the time allowed, I find that the Tenant's application must be dismissed.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Whether or not the Notice has merit, as the Notice complies in form and content and as the Tenant's application has been dismissed I find that the Landlord is entitled to an order of possession. In order to give the Tenant time to find another rental unit and considering that there is no evidence of missed rent or other objections from the Landlord, I grant the Landlord an order of possession effective July 31, 2016.

Although the Landlord states that the heat treatment was missed due to clutter inside the unit the invoice from the pest company does not indicate where the clutter was and the Tenant's evidence of the inability to place the machine on the deck is plausible and has a ring of truth. Given that the Landlord knew that the deck was cluttered in advance of the treatment session and accepting the Tenant's evidence that he was not told to clear his deck, I find that the Landlord has not substantiated that the Tenant is responsible for the missed treatment. I therefore dismiss the claim for those costs.

As it was not necessary for the Landlord to make an application in order to obtain the order of possession and considering that the monetary claim has no merit, I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. July 31, 2016.

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: June 24, 2016

Residential Tenancy Branch