



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an Order for emergency repairs, for monetary compensation, and for the recovery of the filing fee paid for this application.

The Tenant and an agent for the Landlord (the “Landlord”) were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenant by mail. The Tenant did not submit any documentary evidence prior to the hearing.

The Tenant stated that he did not receive any evidence from the Landlord. The Landlord confirmed that a copy of their evidence was not served to the Tenant as they thought the Tenant would be able to access the information submitted to the Residential Tenancy Branch.

Therefore, as the Landlord’s documentary evidence was not served to the Tenant as required, in accordance with rule 3.17 of the *Residential Tenancy Branch Rules of Procedure* the Landlord’s evidence will not be considered as part of this decision. The parties were informed during the hearing that the Landlord’s evidence was not accepted due to a service issue.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present testimony and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

As stated in rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims made on an Application for Dispute Resolution must be related to each other and unrelated claims may be dismissed. Therefore, I exercise my discretion to dismiss the Tenant's claims for emergency repairs and for monetary compensation, with leave to reapply. This decision will address the dispute over the One Month Notice, as well as the Tenant's claim for recovery of the filing fee paid for the Application for Dispute Resolution.

Neither party submitted the One Month Notice into evidence. As the One Month Notice is essential to the matter at hand, the parties were asked to submit the notice following the hearing. After the hearing, the Tenant submitted the One Month Notice. The Landlord submitted the first page of the One Month Notice, along with a Proof of Service document.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on November 1, 2014. Current monthly rent is \$1,146.00, plus parking. A security deposit of \$525.00 was paid at the outset of the tenancy.

On October 18, 2018, the Landlord served the Tenant with a One Month Notice by posting it on his door. The One Month Notice submitted into evidence states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - Seriously jeopardized the health or safety of lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
- Tenant has not done required repairs of damage to the unit

The effective end of tenancy date of the One Month Notice was stated as November 30, 2018.

The Landlord provided testimony that the Tenant's rental unit is not safe due to the condition of the unit. She stated that the Tenant is collecting items that are stored everywhere throughout the rental unit, as well as on the balcony. She stated that the Tenant was provided with a warning letter in 2017 advising him to clean the unit, but that the rental unit remains in the same condition as it was in 2017.

The Landlord submitted that on October 12, 2018 they conducted an inspection of the rental unit and were concerned due to the uncleanliness. She stated their concern regarding the risk of rodents and cockroaches in the rental unit. On November 9, 2018, there was a health and safety inspection conducted in the Tenant's unit and it was noted that the rental unit was not safe in its current condition. The Landlord stated that the condition of the rental unit is causing risk for the other occupants of the rental building, as well as a risk to the Landlord's property.

The Tenant provided testimony that the condition of his rental unit is not cause for any concern for other tenants or the Landlord. He stated that there are no rodents or insects in his unit. The Tenant further submitted that although he could be more organized, he is not unclean. He also questioned why it mattered to the Landlord if his bathroom has not been cleaned.

The Tenant stated that he received one notice from the Landlord to clean his rental unit, which was in August 2018. He testified that he has some recycling stored on his balcony that he is sorting through, but that it is not posing a risk to anyone in the building.

Analysis

In accordance with Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. As the One Month Notice was placed on the Tenant's door on October 18, 2018, and without documentary evidence confirming the date of receipt, I refer to the deeming provisions of Section 90 of the *Act*. Section 90 states that a document served by posting to the door is deemed received 3 days after posting.

As such, I find that the Tenant is deemed to have received the One Month Notice on October 21, 2018. As the Tenant applied for Dispute Resolution on October 29, 2018, I find that he applied within the timeframe allowable under the *Act*. Therefore, the issue becomes whether the reasons for the One Month Notice are valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was issued to the Tenant stating four grounds for ending the tenancy as stated in Section 47(1) of the *Act*. During the hearing, neither party presented any testimony regarding illegal activity by the Tenant, nor any repairs that the Tenant has not completed. Therefore, I find that I cannot determine that there are valid reasons for ending the tenancy under Sections 47(1)(e) or 47(1)(g) of the *Act* as stated on the One Month Notice.

As for whether the Tenant has seriously jeopardized the health or safety of another occupant or the Landlord, or whether the Tenant has put the Landlord's property at significant risk, the parties were not in agreement as to the condition of the rental unit and the potential risk posed.

The Landlord stated that the uncleanness and clutter in the Tenant's unit is creating a safety risk for other occupants as well as potential damage to the Landlord's property. The Tenant stated that his rental unit is disorganized, but not unclean and does not pose a risk to anyone.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their testimony. As stated, in this matter the Landlord has the burden of proof.

The Landlord's documentary evidence did not meet the *Rules of Procedure* and therefore was not accepted to be included in this decision. Therefore, with the lack of documentary evidence from either party, I find that I do not have sufficient information to establish that the condition of the Tenant's rental unit poses significant or serious risk to other occupants or the Landlord's property.

As I find that the Landlord did not prove that the reasons for the One Month Notice are valid, the One Month Notice dated October 18, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*. As the Tenant was successful in his Application for Dispute Resolution, I award the recovery of the filing fee pursuant to Section 72 of the *Act*. The Tenant may deduct \$100.00 one time from the next monthly rent payment.

Conclusion

The One Month Notice, dated October 18, 2018, is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 one time from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: November 28, 2018

Residential Tenancy Branch