



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN TEAM REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing that dealt an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel the One Month Notice to End Tenancy for Cause dated February 11, 2020 (1 Month Notice).

The tenant and the landlord attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they had received and had the opportunity to review the documentary evidence served upon them by the other party.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. The parties were also advised that any applicable orders would be emailed to the appropriate party for service on the other party.

Issue to be Decided

1. Should the 1 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 2, 2019 and reverted to a month to month tenancy after February 28, 2020. Monthly rent is \$1,750.00 per month and is due on the first day of each month.

A copy of the 1 Month Notice was submitted in evidence. There is no dispute that the tenant received the 1 Month Notice on February 14, 2020. The tenant disputed the 1 Month Notice on February 24, 2020, which is the last day possible to have disputed the 1 Month Notice under the Act. The effective vacancy date listed on the 1 Month Notice was March 31, 2020, which has passed.

The one cause listed on the 1 Month Notice is:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The “Details of Cause” section listed on the 1 Month Notice states:

Tenant abuse the normal use of the backyard, store wood or other building material on backyard, power cable across the backyard, the building material and power cable create unsafe living environment, disturb the other tenant in upstairs, make her feel unsafe to live in the house, two tenants early terminate the tenancy agreement because of same reasons.

The parties were advised that I considered the word “disturb” above to be the word “disturbed” and was spelled incorrectly. Neither party objected to my reading of the “Details of Cause”.

The landlord submitted many photos in evidence and stated that the photo evidence supports that the tenant has not cleaned up the large amount of wood, materials, tools and items which encroach into the common area of the other tenant in the backyard. In addition, there appear to be many items left outside, which are not designed or intended to be left outside such as a toaster oven, household vacuum, tools, indoor fans, strollers, chairs, computers and a mattress.

The landlord testified that they have spoken with the tenant many times requesting that they clean up to avoid negatively impacting the other tenant living above the tenant and

sharing the backyard area. The landlord stated that one previous tenant has already vacated citing the tenant as their reason for vacating the rental unit. The landlord stated that the tenant will yell when they are not happy and although the landlord does not hate the tenant, the tenant is hard to deal with when they get mad and that the tenant will need a bigger place for all of their items. The landlord also testified that the tenant living above the tenant has complained that the tenant sometimes works outside with their power tools until midnight, cause a disturbance for the tenant living above.

The tenant's response is that this is unfair, and that the backyard is a shared space and argued that the landlord should have given the tenant a portion of the garage instead of letting the upstairs tenant get the garage to themselves. The tenant also stated that the previous tenant left to move into her new home, which was her grandma's house.

During the hearing the tenant confirmed that the items I mentioned belonged to the tenant including but not limited to the large amount of wood and supplies. The tenant claims that the photo was not taken recently, whereas the landlord stated that the photo was taken in January 2020 before issuing the 1 Month Notice in February 2020. The tenant also confirmed that they have been warned by the landlord regarding cleaning up in the past.

The landlord stated that the two weeks prior to the hearing an agent for the landlord attended to take pictures of the backyard and was ordered by the tenant's spouse to delete the photos, and the agent deleted the photos. The tenant did not disagree that this occurred and blamed the landlord for attending the rental unit without prior written notice.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a landlord issues a notice under Section 47 of the Act, they bear the responsibility in providing sufficient evidence to support the issuance of that notice. I have considered the testimony, documentary evidence and digital evidence, and I am satisfied that the landlord has provided sufficient evidence to support that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

In reaching this finding, I find the photographic evidence provided by the landlord to be compelling and note that the tenant provided no photographic evidence to rebut what I

find to be an unreasonable amount of junk, and other items in the backyard. I also have considered that the tenant admitted that they have been previously warned by the landlord to clean up the backyard and I find the tenant has ignored those warnings. Furthermore, I find the items stored outside to pose a safety hazard such as power tools, toaster oven, indoor vacuum and indoor fans. Furthermore, I find the fact that the tenant did not deny working with power tools until midnight as alleged by the landlord to be unreasonable behavior, which supports the cause listed on the 1 Month Notice. Consequently, I find the 1 Month Notice is valid based and I dismiss the tenant's application without leave to reapply. I find the landlord has met the burden of proof.

As the effective vacancy date of the 1 Month Notice was March 31, 2020, I find the tenancy ended on March 31, 2020. Pursuant to section 55 of the Act, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act and therefore, I grant the landlord an order of possession effective **five (5) days** after service on the tenants.

I note that due to the current State of Emergency related to COVID-19 and *Ministerial Order M089*, that I have used five days instead of the two days for the order of possession. The link to *Ministerial Order M089* is available at:
http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089

Conclusion

The tenant's application is dismissed without leave to reapply.

The tenancy ended on March 31, 2020.

The landlord is granted an order of possession effective five (5) days after service on the tenant and which must be served on the tenant in compliance with *Ministerial Order M089*.

Should the landlord require enforcement of the order of possession, the landlord may apply in the Supreme Court subject to the terms set out in *Ministerial Order M089*.

This decision will be emailed to both parties.

The order of possession will be sent by email to the landlord only for service on the tenant.

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 28, 2020

Residential Tenancy Branch