



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

File No: 761528

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between
s.22 Tenant(s),
Applicant(s)

And
Christopher Housing Society & Diane Anderson, Landlord(s),
Respondent(s)

Regarding a rental unit at: **s.22** 2575 South Main Street, Penticton, BC

Date of Hearing: November 03, 2010, by conference call.

Date of Decision: November 03, 2010

Attending:

For the Landlord: Diane Anderson, agent
s.22 agent/witness

For the Tenant:
s.22 witness

DECISION

Dispute Codes CNC, ERP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy and for an order to have the landlord complete emergency repairs.

The hearing was conducted via teleconference and was attended by the tenant and two witnesses and the landlord's agent and witness.

During the hearing the landlord's agent noted that the Month Notice to End Tenancy for Cause issued on September 30, 2010 was incorrect and that is why she issued the 2nd 1 Month Notice to End Tenancy for Cause dated October 6, 2010. As such, the landlord withdrew the original notice during the hearing.

The parties had indicated the tenant had provided the landlord with more evidence on October 29, 2010 and that in response the landlord provided additional evidence on November 1, 2010. As both parties had discussed the items during the hearing and their contents, I accept the late evidence provided by the parties and have considered it in this decision.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order directing the landlord to make emergency repairs; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in December 2009 as a month to month tenancy for a monthly rent of \$458.00 due on the 1st of the month and a security deposit of \$300.00 was paid in June 2006. The parties have had previous tenancies in other units in the residential property.

The tenant provided the following documents in evidence:

- A copy of a 1 Month Notice to End Tenancy for Cause dated October 6, 2010 with an effective vacancy date of November 5, 2010 citing the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- A handwritten summary of issues dated October 6, 2010;
- A copy of a handwritten letter dated September 30, 2010 address to the Housing Society Board of Directors requesting the Board reconsider s.22 eviction notice; and
- 18 photographs showing mouse feces and traps throughout the rental unit and storage areas.

The landlord submitted the following additional documentary evidence:

- A copy of comments made by the landlord's agent to the board dated October 4, 2010 regarding the activities for which the landlord is seeking to end the tenancy, including the landlord finding a blow torch with knives and a pop bottle with the bottom cut out and some evidence of pot in the sink and the tenants complaints regarding the mice problem including;
- A letter dated October 5, 2010 from the landlord to the tenant advising the tenant that the Board of Directors had considered s.22 request to have the Notice to End Tenancy overturned but had rejected s.22 request as the building has zero tolerance and that s.22 had signed an addendum to s.22 tenancy agreement agreeing to the policy;
- A letter from the landlord indicating the uncleanliness in the rental unit and potential for contributing to the mouse problem;
- 7 photographs of the exterior of the rental unit and a storage area;
- An email from a pest control contractor to the landlord dated October 12, 2010 indicating that he has made 15 visits to the rental unit in the last 10 months;
- A written statement from the maintenance person regarding his entrance into the rental unit in early May 2010 to look at the tenant's fridge as s.22 had concerns about its functioning. The statement goes on to say that he smelled something burning in the laundry room that turned out to be incense and that he then called the administrator in and they found a propane torch some burnt knives and other drug paraphernalia;
- A copy of the addendum to the tenancy agreement noting the tenant had agreed to conditions for crime free housing, including the commitment to not engage in any drug-related criminal activity;
- A copy of a letter from the landlord to the tenant dated September 29, 2010 confirming that she had seen ashes and marks on the stove element where knives were put for heating up knives for "smoking pot....hash....or whatever" and that this was in addition to the finding in May of "hot knives and a blow torch" in the laundry room; and

- A copy of a unit inspection report signed by the landlord's agent and the tenant, in the kitchen section there is a notation that states "Hot knifing evidence in stove top".

The landlord testified that in May 2010 the maintenance man found some items in the tenant's laundry and that he had contacted the agent witnessed with the maintenance man some "hot knives"; a blow torch; a pop bottle with the bottom cut out and some pot in the sink.

The landlord noted the tenant indicated that these items were not s.22 but that a girlfriend had been staying with s.22 and they were hers. The tenant disputes these statements were made.

The landlord testified that when she then found the ashes in the stove element and the marks on the element where knives would have been heated she stated to the tenant "you know I know what this is right?" and that the tenant responded "yeah". The tenant disputes these statements were made.

The landlord contends that she then went and spoke to a board member who confirmed a 1 Month Notice to End Tenancy should be issued to the tenant. That board member attended the hearing and confirmed that he met with the agent immediately after the inspection and agreed a Notice was to be issued.

The tenant and her two witnesses both testified that the tenant does not smoke "pot". One witness stated that he has know the tenant for at least 6 years and that s.22 does not smoke pot and that s.22 doesn't even like him to drink beer. The other witness testified that s.22 has known the tenant for about a year and that s.22 does not smoke.

The tenant testified that prior to s.22 moving into the rental unit the child of the previous renter had had bet mice and that there had been an infestation left behind and s.22 wants the landlord to correct this situation.

Both parties agreed that they had been working with a pest control contractor but that the problem still persists. The landlord states that because there are children in the unit the contractor is restricted in what he can use to complete the extermination and that he has done all he can and that all that can be done now is to be diligent in the use of traps and in creating an environment that does not attract the rodents. If the rodents are not attracted to the area they will leave on their own.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy if a tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

A notice given under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Section 53 of the *Act* states that should the effective date in the notice be earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find, based on the balance of probabilities that the landlord's testimony and witness evidence, including the inspection report signed by the tenant acknowledging the finding of "hot knifing evidence in stove top" establishes that the tenant or a person permitted in the rental unit by the tenant has engaged in an illegal activity.

I also find that as all the residents in the residential property, including this tenant, were aware and are required to commit to the crime free housing addendum in the tenancy agreement this illegal activity would jeopardize a legal right or interest of the landlord and other occupants.

As such, I find the landlord has established cause to end the tenancy in accordance with Section 47 of the *Act*. I note, however, that the effective vacancy date of the notice given by the landlord to be amended to November 30, 2010, in accordance with Section 53(2). I also note here the landlord did not request an order of possession during the hearing.

As I have found the landlord has established cause to end the tenancy, I make no findings on the tenant's application to have the landlord make any emergency repairs.

Conclusion

Based on the above, I dismiss the tenant's application in its entirety. I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on October 6, 2010 to be in full force an effect and as noted above is effective November 30, 2010.

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 03, 2010.

R. Maddia
Dispute Resolution Officer



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

File No: 747050

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

Christopher Housing Society, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: **s.22**-2575 South Main, Penticton, BC

Date of Hearing: June 18, 2010, by conference call.

Date of Decision: June 18, 2010

Attending:

For the Landlord: Harry Niehe, Agent for the Landlord

For the Tenant: Nobody

DECISION

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, at the direction of the Dispute Resolution Officer at the Direct Request Proceeding.

The reconvened hearing was held to address the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant was not represented at the hearing. The Agent for the Landlord was able to state that the administrator for the Landlord had served the Tenant with notice of this hearing by registered mail, but he did not know the date of service. The Landlord submitted no evidence to corroborate the testimony of the Agent for the Landlord.

The purpose of serving notice of the hearing is to give the Tenant an opportunity to participate in the hearing. The Landlord has the burden of proving that the Tenant was served with notice of the hearing. As the person who mailed the notice of this hearing to the Tenant was not available to attest to his/her actions; the person who mailed the notice of this hearing did not submit written documentation that declares how they served the notice of this hearing; and the Landlord did not submit any documentary evidence to corroborate that the notice of hearing was mailed to the Tenant, I find that I have insufficient evidence to show that the Tenant was served with notice of hearing in accordance with section 89 of the *Residential Tenancy Act (Act)*.

Having found that the Landlord has failed to prove service of the hearing, I hereby dismiss the Landlord's Application for Dispute Resolution. The Landlord retains the right to file another Application for Dispute Resolution in relation to this matter.

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 18, 2010.

Ms. P. Senay
Dispute Resolution Officer

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

File No: 747050

In the matter of the *Residential Tenancy Act*, SBC 2002,c.78., as amended

Between

CHRISTOPHER HOUSING SOCIETY, Landlord

Applicant

And

s.22

Tenant

Respondent

Regarding a rental unit at: s.22 **2575 SOUTH MAIN, PENTICTON, BC**

Date of Proceeding: May 4, 2010, by Direct Request Proceeding

Date of Decision: May 4, 2010

Attending:

Not Applicable.

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 20, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt, tracking number as evidence of service. Section 90 of the Act determines that the document is deemed to have been served April 25, 2010, five days following the mailing of a registered mail notice.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 1, 2003, indicating a monthly rent of \$757.00 due the 1st day of the month and that a deposit of \$300.00 was paid on May 1, 2003; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 6, 2010, with a stated effective vacancy date of April 16, 2010, for \$999.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door on April 6, 2010 at 11:00 a. The Act deems the tenant was served on April 9, 2010, 3 days after the posting of the notice on the tenant's door.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenant on April 9, 2010.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

With regards to the monetary claim, I find the evidence is not clear as to how the landlord calculated the \$999.00 in the application. There is no allocation in the application for how much rent is owed for March 2010 or for April 2010. Monthly rent is indicated as \$757.00 per month in the tenancy agreement of May 1, 2003 and there is no Notices of Rent Increase included in the evidence adjusting the monthly rent. As such, how the amount of claim was calculated in the application is not clear.

Conclusion

I find that the amount of monetary claim in the application is not clear and that the evidence maybe incomplete with regards to Notices of Rent Increases. As a result, I find that a conference call hearing is required and I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenant within **three (3) days** of receiving this decision in accordance with section 88 of the Act.

This decision is made on the authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Residential Tenancy Act*.

Date of Decision

D.J. Stevenson
Dispute Resolution Officer



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

File No: 735512

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

Tenant

Applicant

And

CHRISTOPHER HOUSING SOCIETY, Landlord

Respondent

Regarding a rental unit at: s.22 2575 South Main Street, Penticton, BC

Date of Hearing: June 01, 2009, by conference call.

Date of Decision: June 01, 2009

Attending:

For the Landlord: Diane Anderson, Agent

For the Tenant: s.22 Tenant



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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, FF

Introduction

This matter dealt with an application by the Tenant to extend the time to apply to cancel a notice to end tenancy as well as to cancel a 30 Day Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are there exceptional circumstances that would warrant extending the time to apply to cancel a notice to end tenancy?
2. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on July 7, 2008. The Landlord served the Tenant in person on April 6, 2009 with a One Month Notice to End Tenancy for Cause dated April 6, 2009. The Tenant applied to set aside the Notice on April 23, 2009. The Tenant claimed that in an attempt to get evidence together to respond to the Notice, s.22 delayed in applying within the time limits required under the Act.

Analysis

Section 47 of the Act says that a Tenant who receives a One Month Notice to End Tenancy for Cause must apply to set it aside within 10 days or else he is deemed to have accepted that the tenancy will end on the effective day of the notice. In this case, the Tenant received the Notice on April 6, 2009 and therefore had until April 16, 2009 to apply to set it aside. However, the Tenant applied on April 23, 2009 to set it aside.

Section 66(1) of the Act says that the Director may extend a time limit under the Act but only in exceptional circumstances. I find that the Tenant's reasons do not constitute exceptional circumstances and therefore his application to extend the time to apply to cancel the Notice to End Tenancy for Cause is dismissed.

The Landlord requested and I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on June 5, 2009.



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Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

The Tenant's application is dismissed. An Order of Possession to take effect on June 5, 2009 has been issued to the Landlord and a copy of it must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia.

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 01, 2009.

C. MANARIN
Dispute Resolution Officer