



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, CNC, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord has applied for an order of possession based on several one month Notices to End Tenancy issued to the Tenant, including breach of a material term, subletting without the Landlord's prior written consent and the rental unit must be vacated to comply with a government order, and for monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Tenant has applied to cancel the Notices to End Tenancy and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Are the Notices to End Tenancy valid or should they be cancelled?

Background and Evidence

This tenancy began in June of 1999, with the parties entering into a written tenancy agreement.

The parties have had several disagreements over the past while, which has led the Landlord to issue the Notices to End Tenancy. The Landlord alleges that the Tenant

has sublet the rental unit without her prior written consent, that there is an order from the municipality to shut down the unit and that the Tenant has breached a material term of the tenancy agreement with the Landlord.

The Tenant denies he has sublet the rental unit and testified he has roommates, but has not given up possession of the rental unit.

The Tenant and the Landlord both have several allegations regarding the legality of the rental unit, and whether or not it must be shut down due to a government order. I heard much testimony on this issue, including who called the bylaw office, and whether or not the suite is illegal. Nevertheless, I note there is no evidence that a municipal order exists to have the unit vacated.

The parties have also had disputes regarding access to the rental unit by the Landlord. The rental unit is up for sale and the Landlord has been showing the unit, although it appears she has been giving the Tenant the required Notices to enter the rental unit.

One major dispute between the parties involves use of the fireplace in the rental unit. The Landlord had concerns that the Tenant was using the fireplace to heat the rental unit, rather than the base board heaters in the unit. There had been a fire caused by the fireplace in a different rental unit in the property (not the subject rental unit). There were two instances where the glass in the front of the fireplace was broken, allegedly due to the heat, in the subject rental unit. In October of 2008, the Tenant and the Landlord signed an agreement regarding use of the fireplace in the subject rental unit (the "Agreement").

In the Agreement, the Tenant agreed that he would not use the fireplace except to take the chill off of the room and that he had to be in the room when the fireplace was on. The Tenant acknowledged in the Agreement that the fireplace was not necessary to use for heating the rental unit.

On two recent occasions when the Landlord has entered the rental unit, showing the unit, she found that the fireplace was on and that the Tenant was not in the room. According to the testimony of the Landlord the glass has a crack in it again. She alleges that the Tenant is not abiding by the Agreement and is using the fireplace to heat the unit.

The Tenant testified that he was forced to sign the Agreement and that there is nothing in his tenancy agreement that forces him to use the base board heaters. He does not deny using the fireplace to heat the unit, contrary to the Agreement. He testified that in

his experience it is very common for the glass to crack in the fireplace doors. He testified that, in fact, he rarely sees a glass fireplace door that is not cracked.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find that the Notice to End Tenancy issued by the Landlord is valid and should not be cancelled.

Based on his own testimony, I find that the Tenant breached the Agreement with the Landlord not to use the fireplace as a heating source for the rental unit. I do not accept the evidence of the Tenant that the cracked glass doors were not caused by excessive heat. I find this to be a dangerous practice, which is why the parties entered into this Agreement, following a fireplace fire in another unit in the building. I further find the Agreement was incorporated into the tenancy agreement by the parties and therefore, a breach of this Agreement was a breach of the tenancy agreement.

Based on the demeanour and allegations of each of the parties, I also find the tenancy relationship has become untenable and must come to an end. The Landlord and the Tenant were given several opportunities during the hearing to resolve the issues between them and were unable to come to any agreement to cease these disputes.

Having found that this Notice to End Tenancy is valid and should not be cancelled, it is unnecessary to address the other issues in these Applications and those are dismissed.

I find that the Tenant has failed to show this Notice should be cancelled, and therefore, I dismiss his Application.

As I found the Notice to End Tenancy is valid, the Landlord requested an order of possession to be effective at the end of June 2010, based on her Application.

Therefore, I grant the Landlord an order of possession **effective at 1:00 p.m. June 30, 2010**. This order may be enforced in the Supreme Court of British Columbia.

As the Landlord has been successful in her Application, I order that she may retain \$50.00 from the security deposit held to recover the filing fee.

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 15, 2010.

Dispute Resolution Officer