Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions during the hearing.

Preliminary Matter

At 11:01 hrs the tenant was disconnected from the conference call hearing. I then waited for the tenant to return to the hearing, which he did so at 11:06 hrs. No testimony was taken during the tenant's absence from the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on July 31, 2010.

The reasons stated for the Notice to End Tenancy were that the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The tenancy commenced on November 15, 2007, rent is due on the first day of each month.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- That written warnings in relation to excessive belongings on the property and in the unit date back to November 2007, copies of which were submitted;
- That since the tenant moved in 3 years ago these problems have persisted;
- Photographs of the rental unit taken on June 11, 2010, after written notice of an inspection was given to the tenant, which indicate that the rental unit is in a state of disarray and full of an excessive number of belongings;
- That the tenant was not present at the time of the June 11, 2010, inspection;
- A copy of a March 11, 2009, Notice ending tenancy for cause issued to the tenant for the same reasons;
- Copies of photographs taken in February 2009, which show the rental unit to have been in much the same state as it was on June 11, 2010;
- A copy of a May 22, 2009, dispute resolution decision issued by dispute resolution officer Bird, in which the original hearing was adjourned to allow the tenant time to clean the apartment and empty it of excessive belongings; indicating that the parties then reached a mutual decision and the Notice ending tenancy was withdrawn; and
- That no discussion took place with the tenant after the June 11, 2010, inspection; that the evidence collected on June 11, 2010, resulted in the landlord issuing the Notice for cause.

The landlord submitted a copy of an inspection report completed on June 11, 2010, in the presence of the property manager and their caretaker. The report indicated that the rental unit was “unbelievable, no place to walk, even hall is filled with stuff so persons have to walk sideways, even bathtub filled with garbage bags.” The landlord stated that smells are emanating from the unit, likely due to something rotting somewhere among the belongings.

The landlord read an August 24, 2010, statement provided by the site caretaker in which he described a strong smell coming from the unit, out into the hallway. The caretaker has repeatedly used disinfectant, but the smell persists.

The landlord referenced a document entitled “Vancouver Charter – Nuisance,” which included a term that both owners and occupants must maintain their units in a neat and tidy state. The landlord finds the amount of belongings in the unit unacceptable and a breach of this Charter.

The landlord testified that this problem has continued throughout the tenancy and that the tenant did clean the unit in 2009, resulting in the decision to withdraw the March 2009, Notice ending tenancy. The landlord is a licenced insurance agent and stated

that the unit is again in such poor condition and so full of belongings that she is now at risk of having her insurance policy cancelled due to the unsanitary conditions and the amount of items in the unit. The tenant has placed boxes against the wall blocking the second exit from the rental unit; which poses a safety and fire hazard.

The tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That from the time he cleaned the unit in May 2009, to June 10, 2010, the unit remained clean and orderly;
- That if he had known the landlord was going to inspect the unit on June 11, 2010, he would have had it in acceptable condition;
- That he had just commenced sorting through belongings and completing some spring cleaning, that the amount of items in the unit was a temporary state as he was downsizing and that since the Notice was issued he has cleaned the unit to an acceptable condition;
- That the bags in the bath tub contained clothes that were to go to good will;
- That the unit did not smell;
- That at the time of the inspection he was present and that the landlord gave him time to remove items from the unit and that she agreed another inspection would take place; and
- That on July 17, 2010, the unit was “almost presentable” and generally cleaned up and that it would be fully cleaned by the date of this hearing.

The tenant emphasized that on June 11, 2010, the landlord had given him time to clean the unit in order to bring it up to an acceptable standard and the landlord failed to give him consideration in relation to the current state of his unit.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has put the landlord’s property at significant risk and jeopardized the health or safety or lawful right of the landlord. In reaching this conclusion I considered the following factors**:**

- The photographic evidence taken on June 11, 2010, which clearly showed the rental unit full of an excessive amount of belongings;
- That the tenant had been given a previous opportunity in 2009, to bring his rental unit up to a standard that met a reasonable standard of health, cleanliness and sanitary standards;
- That since May 2009, the rental unit has reverted to essentially the same state that prompted the landlord to issue to the Notice ending tenancy for cause in March 2009;

- That the tenant's submission that the unit was free of excessive belongings up to June 10, 2010, is unconvincing, as the amount of belongings present on June 11 were excessive and not likely to have been brought into the unit over a period of 1 day;
- That even if the belongings had been brought in over a period of 1 day, the tenant must have understood, based upon the Notice issued in 2009, that to do so could potentially place his tenancy in jeopardy;
- That the landlord's submission in relation to the potential loss of insurance coverage supports her concern that her property is at risk;
- That the tenant blocking exit doors with belongings poses a safety and fire risk and puts the landlord's lawful in jeopardy; and
- That it is likely, on the balance of probabilities that items may be rotting in the rental unit resulting in a smell that can be detected outside of the unit.

Residential Tenancy Branch Policy suggests that a tenant must maintain "reasonable health, cleanliness and sanitary standards throughout the rental unit," and I find this to be a sensible expectation.

I have accepted the landlord's submission, over that of the tenant, in part, based upon the events that took place in 2009, when the landlord did provide the tenant with an opportunity to remediate his unit to an acceptable standard. From the evidence before me it is clear that the tenant again allowed his unit to progress to a state that has placed to the property at risk of fire hazard and to potentially jeopardize the lawful right of the landlord to maintain liability insurance.

I considered the tenant's submission that he was present at the inspection on June 11, 2010, and find, that even if he had been present, the state of his unit was such that the Notice ending tenancy was justified.

Therefore, I find that the Notice ending the tenancy for cause issued on June 25, 2010, effective on July 31, 2010, is of full force and effect.

Section 55(1) of the Act provides:

> ***55*** *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
>
> > *(a) the landlord makes an oral request for an order of possession, and*
> > *(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord did not request an Order of possession and is at liberty to submit an Application requesting an Order based upon this decision.

Conclusion

As I have determined that the landlord has submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I find that the Notice issued on June 25, 2010, is of full force and effect.

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: August 25, 2010.

Dispute Resolution Officer