

DECISION

Dispute Codes CNC, MNR, MNDC, MNSD, ERP, RP, RPP, LRE, SS, O

Introduction

The tenant applied pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause pursuant to section 47;
- a monetary order for the cost of emergency repairs and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a return of all or part of his pet damage or security deposit pursuant to section 38;
- an order to the landlord to make emergency repairs and repairs to the unit pursuant to section 33;
- an order to the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to serve documents or evidence in a different way that required by the *Act* pursuant to section 71.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that her son handed the One Month Notice to End Tenancy for Cause to the tenant on July 30, 2010. The tenant testified that his roommate handed his application for dispute resolution to the landlord on August 9, 2010. Both parties confirmed receiving these documents. I am satisfied that these documents were served in accordance with the *Act*.

At the hearing, the tenant asked that his application for a \$5,000.00 monetary order be raised to \$7,000.00. He said that all of his possessions were lost in the fire and he maintains that the landlord should compensate him for these losses. At the hearing, the

landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed.

Issues(s) to be Decided

If the tenant entitled to cancellation of the landlord's notice to end tenancy? Is the tenant entitled to a monetary order? If this tenancy is continued, is the tenant entitled to any orders regarding the continuation of this tenancy?

Background and Evidence

This month-to-month tenancy commenced on May 1, 1999. The present rent is set at \$945.00 per month, payable on the first of each month. The landlord testified that she continues to hold the tenant's \$350.00 security deposit paid on or about May 1, 1999.

The landlord testified that the notice to end tenancy for cause was issued to the tenant because of safety concerns arising from, but not limited to, a July 29, 2010 fire in the tenant's apartment. She provided evidence that the landlord and some of the tenants are concerned that continuation of this tenancy presents considerable risk to the building and the occupants of the building. She submitted evidence regarding other fire incidents involving this tenant and combustible material left on balconies and in the halls by the tenant. She read into evidence testimony that Vancouver Fire and Rescue Services found that the point of origin for the July 29, 2010 fire was near the bed and that lighters, cigarette butts and ashes were found beside the bed. The landlord noted that the tenant's letter attached to her copy of the application for dispute resolution confirmed that the Vancouver Fire Department advised him that the cause of the fire was a cigarette. She presented evidence that the smoke alarms had been disabled and that the tenant or his roommate removed the air scrubber left after the fire to filter the damaged air in the rental premises. The landlord presented evidence that "crackpipes" and cigarette butts were found on the premises. The landlord also presented a lengthy history of documents relating to this tenancy.

The tenant testified that he kept a collection of lighters and ashes near the bed and that there was cardboard near this area as well. He testified that he does not smoke in the building during the summer and that his roommate does not smoke tobacco products. He said that no one was in the rental premises when the fire started. He said that the cigarette that caused the fire was thrown from a balcony on another floor and was drawn into the open balcony door by a fan.

The tenant testified that he was not a danger to the premises. He maintained that the Vancouver Fire Department determined that the cause of the fire was unknown, but referred to no written evidence in making this assertion.

Analysis

Tenant's Application to Cancel the Notice to End Tenancy

The landlord has issued a One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act* alleging that the tenant has

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk...

The parties do not dispute that there was a significant fire to the rental premises centered in the bedroom area on July 29, 2010. The tenant disputed the landlord's oral testimony in which she read the contents of an August 12, 2010 letter from Vancouver Fire and Rescue Services. Although the tenant had been provided a copy of this letter, the Residential Tenancy Branch did not receive a copy of this letter. However, the information contained in that letter assigning responsibility for the fire to a cigarette and lighter beside the bed appears to be consistent with the information provided in the tenant's own letter to the landlord, again read into evidence by the landlord. The tenant disputed the accuracy of the Fire Department's findings. He did not dispute the accuracy of the statements read into evidence by the landlord.

Given the conflicting testimony, much of this case hinges on a determination of credibility regarding the circumstances surrounding the July 29, 2010 fire. In addition to the manner and tone of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy.

In considering the evidence regarding the cause of the July 29, 2010 fire, I find the evidence presented by the landlord more compelling than that provided by the tenant. The landlord has referred to statements made in letters from the Fire Department officials who attended this fire. The tenant maintains that he was not responsible for this fire and that a cigarette butt must have entered his window from another floor. On the balance of probabilities, it seems more probable than not that this fire would have commenced as a result of actions taken by those within the tenant's rental premises as opposed to someone from another floor, as the tenant maintains.

The landlord's testimony, combined with the other evidence presented, has persuaded me that the landlord was correct in issuing a Notice to End Tenancy for Cause because the tenant has seriously jeopardized the health or safety of the occupants of this building and has put the landlord's property at significant risk. I therefore dismiss the tenant's application to cancel the Notice to End Tenancy with the effect that this tenancy ends on the effective date set out on that Notice, September 2, 2010.

At the hearing of this matter the landlord requested an Order of Possession. Having dismissed the tenant's application to cancel the Notice to End Tenancy I therefore issue the Order of Possession. I order the tenant to vacate the rental premises by one o'clock in the afternoon on September 15, 2010.

Tenant's Application for Monetary Orders

The tenant has presented insufficient evidence to demonstrate that he is entitled to any monetary order from the landlord. He provided insufficient evidence that the landlord was in some way responsible for the fire damage to his rental premises.

Tenants' Application for Other Orders

Since I am declining the tenant's application to cancel the Notice to End Tenancy, there is no point in considering most of the items cited in the tenant's application for dispute resolution. Although the tenant's original application cited many other orders he was seeking, he presented little if any evidence regarding these matters. I dismiss the tenant's applications for all other Orders requested in his application.

Conclusion

I dismiss the tenant's application to cancel the Notice to End Tenancy. I grant the landlord an Order of Possession to take effect at one o'clock in the afternoon on September 15, 2010.

The landlord is provided with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of 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*.