



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application for dispute resolution filed by the tenant seeking to cancel a Notice to End Tenancy given for Cause.

All parties appeared at the hearing and gave evidence under oath.

Issues(s) to be Decided

Does the landlord have cause to end this tenancy?

Summary of Background and Evidence

This tenancy began on March 1, 2010. The Tenancy Agreement shows that the parties agreed to a 2 year fixed term ending February 29, 2012 after which the tenancy may continue on a month-to-month basis. Rent was fixed at \$2,500.00 per month and the tenant paid a security deposit of \$1,350.00 on February 11, 2010.

The landlord issued a Notice to End Tenancy dated September 17, 2010 effective October 17, 2010. The landlord states that she wishes to end this tenancy because:

1. The tenant has allowed an unreasonable number of occupants in the unit; and
2. The tenant has caused extraordinary damage to the unit.

The landlord testified that the house was vacant for 2 months prior to the commencement of this tenancy during which time the home underwent renovations and redecorating. The landlord testified that she rented the 4 bedroom home the tenant, her one adult child and the tenant's 6 minor children.

On August 16, 2010 the landlord says she was contacted by the Fire Department who advised her there had been a fire in the home. The landlord testified that she lives close to the rental unit and was able to be there in a few minutes. The landlord testified that she toured the rental unit with the Fire Inspector who was taking photographs. The landlord submitted those photographs into evidence along with the Vancouver Fire and Rescue Services Incident Report.

The Dispatch Notes state that "caller yelled and then hung up...calling back" emergency services were dispatched and the notes indicate the operator was "calling back", "trying reportee again" and that the line "goes to voicemail now". The Vancouver Fire and Rescue Services Incident Report states that, upon their arrival, the home was "charged with smoke". The Fire Department members entered the premises through an open kitchen door at the rear of the house and found a pot on the stove. The fire was out upon arrival and one member removed the pot from the stove element. The members began ventilating the unit and approximately 10 minutes later a 17 year old arrived on the scene. The report continues:

"17 year old tenant * arrived after approx. 10 minutes. Stated her younger sister (10 yr old) had been cooking, possibly with oil in a pot, called 911 when the fire started then ran away. 10 year old had not returned to interview. Extensive fire damage to stove top exhaust fan, minor fire damage to painted cabinets, minor smoke damage to kitchen. Unable to locate breaker for stove or fan, unplugged stove. Found battery operated smoke detectors upstairs and down, both non-functioning. Found clothing and other materials stored against furnace and hot water tank, instructed tenant * to remove. Owner arrived, toured home with me, left in care of Tenant. Accidental fire, caused by cooking Heat source electrical. Order issued to owner to have stove fan repairs by qualified electrician and stove serviced by same, and ensure smoke detectors are working.

(reproduced as written)

Under "Remark – Witness" the report states:

17 year old who arrived home at time of incident. She stated that it was her younger sister who had been cooking at the time the fire occurred. I asked her to remove the fire hazard of clothes stacked against furnace and hot water tank. Her english was quite good

(reproduced as written).

The following Orders were issued:

1. Remove all flammables and debris from furnace room.
 2. Do not use stove or exhaust fan until serviced/replace by a qualified technician.
 3. Have smoke detectors placed in proper working order immediately.
 4. Recommend that the premises be fumigated for treatment of pests.
- Note – order not to be delivered until authorities have made contact with occupants.

The landlord says this incident is of a great concern to her, the fire could have been much worse and someone could have died. The landlord testified that the fire began because a 10 year old child was left without supervision. The child took it upon herself to cook what appeared to be oil in a pot on the stove and when the fire broke out she called 911 hung up and ran away.

The landlord says when she toured the home with the fire inspector she was shocked to see the hazardous items of fabric and clothing piled up against the furnace. The landlord says she inspected the rental unit a number of times during the course of the tenancy and had never seen this. The landlord says she always gave the tenant notice of her inspections and the landlord now believes the tenant was cleaning these hazards up before the landlord arrived. The landlord says during this inspection the tenant had no time to clean and when the landlord and the fire inspector opened a kitchen cupboard drawer and found it filled with bananas which were infested with cockroaches. The landlord says she was shocked as to the condition of the rental unit. The landlord said food was "all over" the house. In her written submission the landlord states that

“my house is damaged, dirty, stinking, smell is so strong that even paint cannot kill this smell...” The landlord read from a publication regarding cockroaches stating that certain types of cockroaches can emit an odour. The landlord says the rental unit was vacant for 2 months before this tenant moved in and there were no cockroaches. The landlord testified that when she spoke to the tenant about the cockroach problem the tenant did not appear to understand what she was referring to. The landlord testified that she did not even understand what “cockroach” meant and her child had to tell her.

The landlord testified that since the fire she has had one pest spraying treatment performed in the rental property. However, the landlord says the pest control company has advised her that it will do little good to spray again because the property must be vacated, all furniture removed for further intensive sprayings before the cockroaches would be eliminated. The landlord testified that she tried to have service people in to repair the stove and hood fan but they have declined to attend until the cockroaches are eliminated.

With regard to the smoke detectors in the rental unit the landlord says these detectors were replaced just prior to this tenant moving in and the landlord is at a loss to say what happened to them.

During the fire inspection the landlord says she and the fire inspector discovered a mattress and blankets on the garage floor. The landlord says he believes someone else, perhaps the boyfriend of the tenant’s adult daughter, is living in the home contrary to the tenancy agreement. The landlord submitted photographs of an automobile parked at the home at varying hours which automobile does not belong to the tenant.

The tenant, through her advocate submits that the difficulties between the landlord and tenant arose after the fire. The advocate submits that the damage was minor. The tenant says there was no fire when the Vancouver Fire and Rescue Services arrived. The tenant says it was the 17 year old daughter, not the 10 year old, who allowed a pot to overheat on the stove. The tenant says the 17 year old daughter put the fire out

herself, called 911 and then left the scene returning 10 minutes later. The tenant's advocate submits that the 17 year old was embarrassed and frightened and she tried to blame her younger sister for the incident.

The tenant says any damage to the unit was minor, has been rectified by the tenant where possible, and does not warrant ending the tenancy on the grounds of "extraordinary damage". The tenant's advocate referred to the Orders issued by the Fire Department and states that the work has been completed, that the tenant has offered to complete some work and, in some cases, the tenant is waiting for the landlord to complete the work. The tenant says the landlord has not repaired the fire detectors as directed by the Fire Department. Further the landlord has only fumigated for the pests once. The tenant says that she advised the landlord in June that there was a cockroach problem in the home but the landlord did not take care of the problem.

The advocate produced photographs of the rental unit showing it as neat and tidy. The interpreter testified that he had visited the rental unit and it was indeed neat and tidy. The advocate submits that while there may be cockroaches in the rental unit the landlord has not shown how having cockroaches could be found to be "causing extraordinary damage" such that this tenancy should end.

The advocate states that the real reason the landlord wishes to evict the tenant is because she does not approval of her morals. The advocate states that the evidence of this is that the landlord insisted on knowing the last names of each of the tenant's children when they moved into the rental unit. The advocate submits that this is because the landlord wished to discover if the children were all from the same father. The advocate says the landlord drives by the rental unit frequently watching the comings and goings of the tenants in the rental unit. The advocate states that the only reason the landlord took the tenant and her children as her tenants is because she was offered and up-front lump sum payment by the tenant's previous landlord to do so. The advocate recalled one incident in which a black gentleman friend of the tenant's came with a bag of groceries and the landlord assumed that this man was living with the

tenant. The advocate states that the tenant is a Christian woman and these sorts of accusations are offensive to her.

The landlord objected to these submissions. The landlord states that she is an immigrant herself and is not racist or prejudiced against immigrants. The landlord says that the reason she needed to know the tenant's children's full names is to put their names on the rental agreement so she had a list of all occupants. The landlord says she has learned to become cautious about her tenants. The landlord explained that prior to this tenancy she had rented the premises to two seemingly nice men who told her they were from India. The landlord says these two men were later arrested in a raid on the home and she later learned that they were terrorists from Pakistan who were engaged in terrorist activities in the home. The landlord testified that this event frightened her considerably and she had decided not to re-rent the house again. This is when the landlord and her husband took to renovating the property. It was not until 2 months later that the landlord felt comfortable re-renting the premises and she felt comfortable with the tenant and her children. The landlord says she has no desire to learn about the tenant's boyfriends. The landlord submits that she met with the tenant before she moved in and it was obvious the tenant is black and if it was true that she is a racist she never would have rented to the tenant in the first place.

Analysis

The landlord has issued a Notice to End Tenancy saying that there is too many people in the rental unit and that the tenant has caused extraordinary damage.

With respect to the number of occupants, the landlord says she rented the property to two adults and 6 children and there are now 9 persons living in the home. The home is a single family dwelling with 4 bedrooms. While 9 persons in such a home may be crowded, I do not find the addition of 1 person to constitute "too many" where 8 had already been approved to reside there.

With respect to the claim of extraordinary damage, the evidence shows that a fire was started in the rental unit by one of the tenant's children. The Fire Department report states that someone was cooking what appeared to be a pot of cooking oil – vegetable oil (which includes margarine) on the stove when the fire began. Someone called 911, yelled, hung up and left the rental unit. The landlord said it was the 10 year old who started the fire because she was left unsupervised in the home. This is corroborated by the statements of the 17 year old who told the fire department that it was her 10 year old sister who started the fire. The tenant now submits that the 17 year old lied to the Fire Department and it was actually her 17 year old daughter who started the fire not the 10 year old but the 17 year old was too frightened to take the blame at the time.

The Fire Department Report also shows that there is an infestation of cockroaches in the rental unit. The tenant says the infestation has been in place since June and that she has advised the landlord of the problem but the landlord has failed to act. However, while the tenant states she has complained, the landlord's evidence is that the first time she became aware of the cockroaches is when she attended to inspect the premises after the fire.

Neither party denies there was a fire in the rental unit caused by one of the tenant's children. Neither party denies that there are cockroaches.

The landlord has issued a notice wishing to end this tenancy on the ground that the tenant has caused extraordinary damage to the rental unit. However, while kitchen fires do happen and cockroaches can exist are they ordinary or extraordinary? Ordinary is defined as "what is commonplace or standard" and extraordinary is defined as "unusual or remarkable". Kitchen fires do happen but it is reasonable to say that they cannot be deemed standard or commonplace. Further, even though I am mindful that fire department personnel described the resulting damage as "minor" this does not mean it is normal wear and tear. I find that if I cannot call this damage commonplace or standard; if I cannot call it not normal wear and tear then it is reasonable to conclude that the damage that results from a kitchen fire is extraordinary damage.

With respect to the cockroaches, I accept the landlord's evidence and find that there were no cockroaches prior to this tenancy beginning in March. This finding is supported by the tenant's own evidence that she did not notice cockroaches until June. Having found there were no cockroaches when this tenancy began, the only reasonable and probable conclusion is that the cockroaches arrived after this tenancy began. If the cockroaches arrived after this tenancy began, then it is also reasonable to conclude that they cockroaches arrived and remain because of something the tenant is doing or not doing.

Like kitchen fires, I find it is reasonable and probable to conclude that cockroaches are not commonplace or standard and not normal wear and tear. I therefore I find it reasonable to call a cockroach infestation extraordinary.

The tenant's advocate argues that while there may be cockroaches in the rental unit, there has been no evidence that the cockroaches are causing damage. The landlord's evidence, that I accept, is that she has been unable to complete the repairs to the rental unit caused by the kitchen fire caused by one of the tenant's children. This is because the landlord cannot find repair persons who are willing to come into the rental unit while there is a cockroach infestation. With respect to treating the infestation itself, pest control experts have advised the landlord that further treatments will do no good unless the rental unit can be treated while it is vacant. Given these elements which I find to be facts and the fact that I have found cockroaches to be extraordinary, I find that it is reasonable and probable to conclude that an infestation of cockroaches will diminish the value of the rental property. The landlord's inability to have repairpersons attend her home to make repairs also diminishes the value of her property. Further, the process of eliminating the infestation will cause the landlord's property to have to undergo repeated chemical treatments. I find that these elements constitute damage which can be characterized as extraordinary.

I am therefore satisfied that the landlord has cause to end this tenancy on the ground that the tenant has caused extraordinary damage to the rental unit by causing a fire in

the kitchen and by causing a cockroach infestation to take hold in the rental unit. I therefore dismiss the tenant's application seeking to set aside the Notice to End Tenancy given for cause.

I am satisfied that the landlord has cause to end this tenancy on the ground that the tenant has caused extraordinary damage to the rental unit by causing a fire in the kitchen and by causing a cockroach infestation to take hold in the rental unit. I therefore dismiss the tenant's application seeking to set aside the Notice to End Tenancy given for cause.

The landlord has asked for an Order of Possession. Advocate for the tenant requested that if I were to find sufficient grounds to end this tenancy that I be mindful of the difficulty this tenant will have finding new accommodation for herself and her 6 children. The one month Notice to End Tenancy issued October 17, 2010 set the effective date of the end of the tenancy as October 17, 2010 which is incorrect. The earliest date such a one month Notice issued on October 17, 2010 could take effect would be November 30, 2010. Being mindful of the advocate's request, I will issue an Order of Possession effective 1 o'clock in the afternoon on December 15, 2010.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.