

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard. At the hearing the landlord made an oral request for an order of possession in the event that the tenant's application was not successful.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The rental unit consists of an apartment located in a building that houses a total of 54 apartments. The owner purchased the building in June 2009. In October 2010, the owner sent notices to all the occupants that an annual inspection would be conducted. The tenant's inspection was conducted on October 08, 2010.

The owner and the resident manager conducted the inspection and found that the apartment did not meet the normal standards of sanitation. The unit had bags of garbage scattered around the kitchen, old pizza boxes, soup cans, clothing, ashtrays with hundreds of cigarette butts and approximately 80 empty beer cans. The condition of the apartment was photographed and in a letter dated October 15, 2010, the landlord described their findings as "very disturbing". The tenant was advised to have the suite cleared of all garbage, cans, cigarettes and other clutter by October 18 at which time a follow up inspection would be conducted.

The tenant requested for an extension of time to clean out the rental unit and the inspection was postponed to October 20, 2010. On that day at the appointed time, the resident manager was unable to gain access as the door was chained from the inside. The inspection was not conducted and the manager wrote up an entry notice for October 22 and posted it on the door.

On October 22, 2010, the resident manager was denied access again as the door was chained from the inside. The landlord served the tenant with a notice to end tenancy. The reason for the notice was that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice was given to do so.

On November 10, the landlord gave the tenant a notice of entry for the purpose of inspecting the unit on November 12. On November 12, the tenant did not allow access and posted a note on the door saying she was sick. The tenant was given another notice of entry for an inspection on November 16 and on that day, the door was chained.

The landlord was able to gain access for a follow up inspection on November 17 and found that the apartment was in almost the same condition as he found it on October 08, 2010.

The landlord complained that there were mice problems in the building and despite repeated treatments, mice were eradicated from most areas in the building except for the area in which this rental unit is located.

The landlord filed copies of all communication between the parties.

Analysis:

In order to support the notice to end tenancy, the landlord must prove that the tenant had breached a term of the tenancy agreement that was not corrected within a reasonable time after written notice was given to do so.

Based on the documentary evidence and the verbal testimony of both parties, I find that the landlord gave the tenant several chances to clean up the rental unit and the tenant failed to take advantage of the opportunities to do so. In addition the tenant denied access to the landlord on at least three occasions. Despite the warning letter and the notice to end tenancy, the tenant did not correct the problem.

Based on the photographs filed by the landlord, I find that the condition that the tenant maintains the suite in is a health, fire and safety hazard to herself, the landlord and the other occupants of building. The tenant failed to take advantage of the opportunities given to her by the landlord to have the unit cleaned and also denied the landlord access to conduct follow up inspections. Therefore I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant has failed to prove her case and must therefore bear the cost of filing this application.

Conclusion

I grant the landlord an order of possession effective on or before **1:00 p.m. on 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 24, 2010.

Dispute Resolution Officer