



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a one month Notice to End Tenancy issued for cause.

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.

Issue(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

The Tenant was served with a one month Notice to End Tenancy for cause, which was issued on May 2, 2011, and has an effective date of June 30, 2011 (the "Notice").

The reasons the Notice was given to the Tenant are indicated as the Tenant has caused extraordinary damage to the rental unit, and that the Tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable amount of time after receiving written notice to do so.

On the issue of damage, the Landlord provided evidence that the Tenant had caused a flood in the subject rental unit, which also caused water damage to several other rental units situated underneath the subject rental unit. The Landlord is concerned that the Tenant had no insurance and she may not have the funds required to pay for the damage to the rental unit and other units.

On the issue of a breach of a material term, the Landlord provided evidence that the Tenant has pet birds in the rental unit, which had been left out of their cage. The Landlord is concerned due to the bird droppings all over the rental unit. Agents of the Landlord are concerned with the health hazard of the bird droppings and the lack of cleanliness in the rental unit.

Furthermore, the Landlord was concerned that due to the bird droppings throughout the rental unit, that the flood of water may have washed unsanitary matter into the units below. The Agent for the Landlord testified that extra caution had to be taken with the cleaning of all the affected units.

The Landlord sent a letter to the Tenant on October 4, 2010, demanding that she keep her birds in a cage. The letter indicates the Tenant would lose her privilege to have a bird if the request was not complied with.

In reply, the Tenant testified that she had got rid of the birds on May 9, prior to the hearing. The Tenant also questioned whether or not this was a material breach of the tenancy agreement, as she had not been warned about her tenancy being in jeopardy over the birds.

The Tenant acknowledged she had caused the flood to occur. The Tenant testified and provided evidence that she had a medical emergency on the night in question. She placed her bed linens in the bathtub to soak in water. The Tenant testified that she did not notice she left the faucet on slightly and water continued to trickle into the tub until it overflowed, causing the flood.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Notice is valid and should not be cancelled.

While I accept the Tenant's testimony that the flood was not intentional, I find the Tenant was negligent when she did not turn the tap off completely and this caused the flood. I find the flood caused extraordinary damage to the Landlord's property. Therefore, I dismiss the Application of the Tenant.

As I have found the Notice to be valid, I do not need to address the issue of a breach of a material term.

The Agent for the Landlord requested an order of possession at the hearing and under section 55 of the Act, I must grant that request.

The Agent for the Landlord requested an extension to the effective date of the order of possession, as the Agent explained that the Landlord may be able to work something out with the Tenant regarding paying for damages at the unit. The Agent explained that the Tenant may not have to vacate the rental unit depending on what can be worked out with the Tenant.

Therefore, at the request of the Landlord, I grant an order of possession effective at **1:00 p.m. July 31, 2011**. This order may be filed and enforced in 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*.

Dated: June 06, 2011.

Residential Tenancy Branch