



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This conference call hearing was convened in response to the tenant's application requesting more time for the application process, for cancellation of a 1 Month Notice to End Tenancy for Cause, and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset, the tenant addressed his application for more time to submit his application to cancel the notice to end tenancy. The tenant confirmed having received the notice in question on September 27th, 2011, and not the 17th as stated on his application for dispute resolution. He stated that he underwent prostate surgery on October 3rd, 2011 and was discharged from the hospital on the 6th. He submitted that his hospitalization combined with the medications limited his ability to deal with this matter in a timely manner.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside?

Background and Evidence

The rental unit consists of a one bedroom apartment in a subsidized housing complex. Pursuant to a written agreement, the month to month tenancy started on November 20th, 2009. The tenant's portion of rent is \$447.00.

According to the landlord's documentary evidence, the reason for issuing the notice to end tenancy stemmed from the tenant's use of two plug-in type air conditioning units that keep tripping the suite's breakers; the modification and continued use of a

microwave unit deemed to be a fire hazard by the landlord's electrician; the continued use of extension cords deemed to be a fire hazard; and other unsafe practices in breach of the tenancy agreement, such as the installation of an alarm and an unsafe shower head.

In support of the grounds for issuing the notice to end tenancy, the landlord relies on clauses 15 and 25 of the agreement concerning health and fire hazards, and clause 26 concerning major changes to the premises without written permission.

The landlord provided a copy of the 1 Month Notice to End Tenancy which states for reasons that; the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant put the landlord's property at significant risk; and for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice was given to do so.

In his documentary evidence, the landlord also provided written notices to correct problems with safety issues and downsizing dated November 25th, 2010, May 4th, May 5th, June 23rd, July 11th, and August 31st, 2011. The evidence also included a letter from describing an incident on June 24th, 2011 in which a community worker had a confrontation with the tenant; the letter described the tenant as demanding, and threatening.

The salient portion of the landlord's evidence centers on the tenant's failure to cooperate with the society. He stated that the tenant questions the terms of the agreement and the staff's competencies. Central to the landlord's concerns were the tenant's use of air conditioning units and a microwave oven that were deemed to be fire hazards by the society's electrician. The landlord stated that the tenant has tampered with the microwave's electrical cord and keep it plugged in the same outlet rather than removing it as directed. The landlord said that the tenant uses electrical cord extensions against throughout the unit, that he draws excessive loads from the use of other home appliances, and that he has been unsuccessful in getting any cooperation from the tenant. The landlord also stated that the tenant is confrontational and has made threats towards the staff.

The society's administrator echoed the landlord's evidence; she testified that the tenant was also directed to downsize the amount of contents in the suite, and that the clutter also raised a safety issue that was brought to the tenant's attention. She said that soon after the tenancy started, the tenant started to make demands for the society to make changes to his suite, such as replacing the flooring. Concerning the safety hazard over the electrical issues, she stated that the society's insurer directed her to ensure that the

tenant comply with the electrical code, which she states she has not been able to obtain. She stated that on or about August 24th, 2011 the tenant installed a security system without first obtaining permission.

In his documentary evidence, the tenant provided 73 photographs showing the layout of his suite. He also provided a written response to the landlord's reasons for issuing the notice, in which the tenant states that no new hooks were added since mid-March 2010 to hang pots and pans; that he never received a formal request to remove the microwave from the top of the refrigerator; that the pantry has been removed from the kitchen; that the air conditioning units are used as fans only and do not draw an overload of current; that the audio cable is not electrical, and that it is encased in commercial grade cable bridge and will not be removed; that the pest control person never asked him to move his furniture; that he feels harassed; that he suffers from an anxiety disorder and other health issues; and that he was passively aggressive towards the community worker but did not directly threaten her.

The tenant testified that all the safety issues addressed by the landlord have been corrected since receiving the Notice to End Tenancy. He acknowledged having been uncooperative in the past, but stated that he is now willing comply. He attributed his conflict with the landlord to his health, but said that he was willing to do anything to stay in his unit.

The mental health advocate stated that she went to the tenant's unit and confirmed that the tenant made the necessary changes and that he is now fully complaint. She offered to enter into a behavioural agreement however the society's administrator declined. The administrator stated that the tenant severed his relationship with the society and that his history of non-compliance places the complex and the other occupants at risk.

The outreach worker stated that housing is currently under duress and that the tenant has been in compliance since September or August 2011.

Analysis

First addressing the tenant's request for more time to make an application to cancel a notice to end tenancy; the Act states that the director may extend a time limit only in exceptional circumstances. I find that the tenant's surgery on October 3rd was not an emergency but rather a scheduled appointment. The tenant received the Notice to End Tenancy on September 27th, six days before his hospitalization; he did not submit any

reasons why he could not have submitted his application before October 3rd; nor why he was not capable to seek or obtain any assistance. Accordingly I do not find that the tenant's circumstances were exceptional.

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy with cause does not make an application for dispute resolution within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution within the allowed time frame and on that basis alone the landlord is entitled to an order of possession.

Notwithstanding, after careful review of the parties' testimony, documentary evidence and submissions I find that the landlord had sufficient grounds to issue a 1 Month Notice to End Tenancy in the circumstances. Therefore I find that the notice is valid and that the tenancy ended on the date stated on the notice.

Conclusion

The tenant's application is dismissed.

Section 55(1) of the *Residential Tenancy Act* states:

"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."*

Since the tenant's application is dismissed, the landlord is entitled to an order of possession.

The landlord made an oral request for an order of possession at the hearing. Section 55(3) of the Act permits me to specify the date that the order of possession will take effect. I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 09, 2011.

Residential Tenancy Branch