



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened on the tenant's application to have set aside a Notice to End Tenancy for cause served on January 27, 2012 and setting an end of tenancy date of February 29, 2012.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began on December 1, 2011 under a one-year fixed term rental agreement. Rent is \$650 per month and the landlord holds a security deposit of \$325.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served on the grounds that the tenant had put the landlord's property at significant risk by delays in reporting that there was no water in the rental unit, and later that there was no hot water. The landlord stated that the tenant and her boyfriend had two additional long term guests which she stated over taxed the well and septic system.

Specifically, the landlord gave evidence that on January 15, 2011, the tenant was asked to leave a water tap running during a cold spell, and was assured by the tenant that it would be no problem.

On January 21, 2012, a resident of the second unit on the property advised the landlord that she was without water, and that, although there people in the rental unit, no one had answered the subject tenant's door when she had attempted to advise her of the problem.

The landlord was able to contact the subject tenant by text message to advise of the water problem and received a reply stating that the pipes had indeed frozen and that the toilet had cracked and leaked water throughout the bathroom.

The landlord's husband investigated and found that a pipe and pressure tank which supplied the rental unit had burst, causing the pump to run continuously and exhaust the well.

The landlord picked up a new toilet and was advised by the tenant would not be home that night and they arranged to install it the following day. However, when the landlord's husband delivered the toilet to the rental unit, he saw that the tenant was home and completed the installation.

As he was departing, the tenant advised him that the hot water tank was not working, which could not be replaced for a few days as a new one was not locally available and had to be ordered.

The landlord stated that if the tenant had reported the lack of water in a timely manner immediately, then the landlord may have taken action to avoid the chain of events starting with the burst pipe and pressure tank, depleted well and failure of the hot water tank.

Analysis

Section 47(1)(d)(iii) of the *Act* provides that a landlord may issue a Notice to End Tenancy for cause in circumstances in which a tenant has, "put the landlord's property at significant risk."

Damaged water pipes are among the matters that may be treated as emergency repairs under section 33 of the *Act* which permits a tenant to contract a third party to make repairs if two attempts to contact the landlord fail.

I find that the tenant owed a duty to report the water, toilet and hot water tank failures to the landlord promptly. I find that the tenant did not initiate reports of any of these failures and that not doing so gave reasonable cause for the landlord's concerns.

Therefore, I found that the Notice to End Tenancy was lawful and valid and I declined to set it aside.

On hearing that determination, the landlord requested an Order of Possession in support of the notice, issuance of which is made mandatory under the circumstances by section 51(1) of the *Act*.

The landlord stated that, given the short time between the hearing and the February 29, 2012 end date set by the notice, she would accept an Order of Possession for March 31, 2012.

Conclusion

The Notice to End Tenancy of January 27, 2012 is upheld.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on March 1, 2012.

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: February 16, 2012.

Residential Tenancy Branch