



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing was scheduled in response to an application by the tenants for cancellation of a notice to end tenancy for cause / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a verbal agreement, the tenancy initially began on November 6, 2010. Pursuant to a written tenancy agreement, the month-to-month tenancy began on December 6, 2011. Monthly rent of \$1,147.00 is payable in advance on the first day of each month. A security deposit of \$550.00 was collected near the initial start of tenancy in November 2010.

The landlord issued a 1 month notice to end tenancy for cause dated January 6, 2012. The notice was personally served on the tenants on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is February 29, 2012. The reason shown on the notice for its issuance is as follows:

Tenant has not done required repairs of damage to the unit / site

The “required repairs” concern a “burn” mark and two “melt” marks on the top edge of the bathtub. The tenants claim that these marks were likely caused by a babysitter. In relation to these marks, the landlord gave two written warnings to the tenants dated December 6, 2011. The warnings state:

TUB BURN. Due to your negligence from smoking in a “no smoking” home the tub arm has been burned. The tub repair, which I will be present for, and I will approve who does the repair, must be complete within 30 days of this notice. If the repair is not completed within 30 days I will have grounds to end this tenancy.

Request for Repair. This home is “NO SMOKING” and by the [burn] in the tub, from smoking, there has been an infraction in our agreement. If, upon further inspections of the home, I find that there has been smoking in the home, I will have grounds to end this tenancy.

Thereafter, on January 16, 2012 the tenants filed an application to dispute the notice.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute, and undertook to achieve a resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca Particular sections of the Act which relate directly to this dispute are referenced below.

Section 47 of the Act speaks to **Landlord’s notice: cause**, and provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3) [*obligations to repair and maintain*], within a reasonable time;

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 28 of the Act addresses **Protection of tenant’s right to quiet enjoyment**, and section 29 of the Act speaks to **Landlord’s right to enter rental unit restricted**.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that the tenants will vacate the unit by not later than March 31, 2012, and that an order of possession will be issued in favour of the landlord to that effect;
- that for March 2012, the tenants will pay rent in the total amount of \$1,250.00;
- that the tenants will mail the rent cheque for March 2012 to the landlord;
- that by no later than February 29, 2012, the tenants will obtain no less than 3 quotes for repairs to the damaged tub;
- that by no later than February 29, 2012, for the information of the landlord the tenants will provide copies of the above quotes to the landlord;
- that the tenants will undertake at their cost to have the repairs made to the damaged tub by not later than the end of the tenancy on March 31, 2012.

In anticipation of the end of tenancy, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

As the settlement includes issuance of an order of possession pursuant to the 1 month notice to end tenancy, and not cancellation of the notice as sought in the tenants' application, the tenants' application to recover the filing fee is hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Saturday, March 31, 2012**. This order must be served on the tenants. Should the tenants 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.

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 02, 2012.

Residential Tenancy Branch