



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC PSF OLC FF

Introduction

This hearing was convened in response to an application by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End), with an automatically adjusted effective date of May 31, 2012. The tenant also sought for the landlord to comply with the Act, and to provide services or facilities required by law – principally heat, and to recover the filing fee. The reasons stipulated by the landlord as per Section 47 of the Residential Tenancy Act (the Act) are as follows;

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*

The landlord withdrew reasons under Section 47(e). The applicant acknowledged that the viability of the tenancy is the paramount application. At the outset of the hearing the landlord verbally requested an Order of Possession in the event the Notice to End is upheld or the tenant's application dismissed.

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via evidence submissions and their testimony. During the hearing the parties also had opportunity to discuss their dispute with a view to a mutual resolution of their dispute.

As *preliminary*, the tenant claims the landlord posted the Notice to End Tenancy for Cause on his door. Section 88 of the Act prescribes, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person **must** be given or served in one of the following ways:

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

It must be noted that in this type of application the landlord must show they issued the Notice to End for sufficient cause, but the landlord is not required to prove every reason stipulated on the Notice to End. It must further be noted that the applicant bears the burden of proof in respect to their claims.

Background and evidence

The parties acknowledged receiving one another's evidence. This tenancy began December 01, 2011. The monthly rent payable is \$625.00. The tenant occupies a rental unit in a multi-unit complex managed by the landlord and in which the landlord / owner also resides. Both parties provided contrasting testimony respecting their dispute and neither disputed they endure a very acrimonious relationship.

The tenant provided testimony that since the outset of the tenancy the landlord has failed to provide adequate heat in their rental unit, and they have repeatedly alerted the landlord to this issue. The tenant claims the heating system does not provide sufficient heat to their unit and they feel cold or cool. The tenant provided testimony of times the heat has been insufficient; and, an abundance of hearsay testimony of experiences of others and of past and current tenants whom purportedly had / have issues with inadequate heat in their units and of which some of the testimony was contradicted by the document evidence of the landlord. The tenant provided testimony that he found some nights lacking sufficient heat in his rental unit. The tenant provided a hand-written notation to the landlord dated February 9/12 that on February 08, 2012 they, *awoke*

with feet and legs aching because the apartment was very cold with no heat from the register.

The landlord testified the entire complex is heated by a radiant system (boiler / registers) and that to their knowledge and to their enquiries all units are receiving adequate heat, and that they themselves reside in the building and are intimate with conditions in the building. The landlord testified that in the past 5 years they have installed 4 new boilers for the building and in their 10 year ownership have never received a complaint regarding insufficient heat. They have repeatedly assessed the tenant's complaint and found no basis for any remedy. Both parties agreed that the landlord offered the tenant some aids to use at times they feel cold (oil-filled heaters and / or an electric blanket that the landlord keeps on hand for the elderly tenants of the complex), and that the tenant has refused these aids. The landlord provided a petition with signatures from 26 units of the complex attesting they have, *found (their) units to be comfortably warm throughout the winter months*. The landlord indicated that one such signature was provided by the occupant of a unit the tenant alleged told them had insufficient heat.

The tenant also testified that they have determined the rental unit is not as clean as he originally believed when he moved in. The tenant now alleges the rental unit may not have been, *properly cleaned*, as he has more recently experienced some unclean surfaces in the washroom they did not notice at the outset of the tenancy.

The landlord testified the rental unit was clean upon the tenant taking possession, and that it is not their practice to provide unclean units to new tenants. The landlord's manager was unavailable due to health reasons, but the landlord provided a letter from the previous tenant of the unit dated April 19, 2012 attesting that they cleaned the unit and that the applicant, *assured (the former tenant) the apartment was very clean a few days later when I bumped into him in the hallway and inquired about how he had settled into the apartment*.

The tenant testified he also receives some second hand smoke from an adjoining rental unit. The landlord testified that some tenants do smoke, and he can only control the public portions of the complex (hallways, etc.).

During this hearing the parties discussed their dispute in respect to the paramount application: the Notice to End and the viability of the tenancy. Both parties turned their minds to compromise and reached a mutual agreement to settle this dispute in full and final terms, and to the mutual satisfaction of both parties; and, that I record their settlement as a Decision and provide Orders to perfect the settlement as per Section 63 of the Residential Tenancy Act, as follows:

1. the tenant and landlord agree that **this tenancy will end** no later than **May 31, 2012**, and
2. the landlord will receive an **Order of Possession effective May 31, 2012**, and
3. the landlord agrees to **waive the payable rent** under the tenancy agreement **for May, 2012 (\$625.00)**. The tenant is not required to pay rent for May 2012, and
4. the tenant and landlord agree that upon the tenant vacating the rental unit and the landlord receiving the keys to the rental unit, the tenant will receive **\$500.00** from the landlord, **on or before May 31, 2012**.

Analysis

The onus is on the applicant to provide proof of their claims. On preponderance of all the evidence in this matter I have reached a decision on the remaining balance of the tenant's claims on application – the claims not related to the Notice to End. I find the tenant has failed to provide sufficient evidence to support their claims of insufficient heat, an unclean rental unit upon possession five months prior, or neglect on the part of the landlord. I further prefer the evidence of the landlord in respect to the tenant's claims. As a result I decline to Order the landlord to comply with the Act or provide services or facilities required by law; and, I effectively **dismiss** all remaining claims of the tenant's application without leave to reapply. As the parties were able to resolve

and settle the dispute as to the viability of the tenancy, I find the applicant must bear the cost for filing this application.

Conclusion

The tenancy is ending by mutual agreement **May 31, 2012**.

The settlement terms are binding upon both parties. All other aspects of the tenant's application are **dismissed**, without leave to reapply.

I grant the landlord an **Order of Possession, effective May 31, 2012**. The tenant must be served with this Order. If the landlord serves the Order of Possession on the tenant and the tenant fails 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.

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$500.00**. If the tenant complies with the terms of the parties' settlement and vacates the rental unit and returns the keys, and the landlord does not give the tenant the agreed \$500.00, the tenant may give this Order to the landlord. If necessary, this order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: May 04, 2012

Residential Tenancy Branch