



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated June 18, 2012.

Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted should it be cancelled as requested by the tenant?

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end the tenancy under the Act.

Background and Evidence

Submitted into evidence by the tenant was a written statement and photographs. Also in evidence was a copy of the One-Month Notice to End Tenancy for Cause dated June 18, 2012 purporting to be effective date on July 18, 2012, indicating that the tenancy was being ended because the tenant had:

- significantly interfered with and or unreasonably disturbed other occupants or the landlord.
- seriously jeopardized the health or safety of lawful right of another occupant or the landlord
- put the landlord's property at significant risk.

Submitted into evidence by the landlord was written testimony, a copy of the tenancy agreement and copies of letters from the municipality regarding bylaw violations dated April 24, 2012, April 26, 2012, May 31, 2012, June 4, 2012 and June 22, 2012.

The tenancy began in April 2011 and the rent is \$1,600.00. The landlord testified that the tenant had built illegal structures that were not permitted by the municipality. The

landlord testified that, despite repeated verbal and written warnings over the past several months, the tenant has not removed these structures. The landlord testified that fines have been imposed by the municipality. The landlord stated that the basis for issuing the One Month Notice to End Tenancy for Cause was the tenant's inaction with respect to the landlord's and the municipality's requests for removal of the structures and they are seeking an Order of Possession based on the Notice.

The tenant acknowledged that he placed the structures on site and they had not been removed. The tenant also acknowledged that warnings and fines had been received from the municipality. However, the tenant's position was that the existence of the structures and his refusal to remove them did not constitute significant interference with, or unreasonable disturbance of other occupants or the landlord. The tenant pointed out that the situation also did not seriously jeopardize anyone's health or safety or lawful right of another occupant or the landlord, nor was the landlord's property placed at significant risk. Therefore, according to the tenant, there is no valid basis for the landlord's One Month Notice to End Tenancy for Cause. The tenant pointed out that he had actually purchased one of the structures from the landlord which would support that the landlord sanctioned its use as part of the tenancy agreement.

The tenant stated that the One Month Notice to End Tenancy for Cause should be cancelled.

Analysis

With respect to whether or not the tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, sufficient to warrant ending the tenancy under section 47 of the Act, I find that section 32 of the Act imposes responsibilities on the landlord for the care of a unit. Under this section of the Act, a landlord must *provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.*

By refusing to correct the noncompliant structure, after being made aware that its construction was not lawful and that the landlord would be sanctioned by the municipality, I find that the tenant's conduct *did* significantly interfere with the landlord's responsibilities and obligations under the Act and other legislation. I also find that the tenant's refusal to remove the structures had seriously jeopardized the lawful right of the landlord to avoid prosecution by properly complying with local bylaws.

For the reasons stated above, I find that the tenant's Application requesting that the One-Month Notice to End Tenancy for Cause be cancelled is not supported by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. I therefore find that the landlord is entitled to an Order of Possession.

In this instance, although the effective date in the Notice to End the Tenancy was given as July 18, 2012, I find that, in order to comply with the Act, the earliest date that this June 18, 2012 One Month Notice to End Tenancy for Cause, issued under section 47, would be effective is July 31, 2012.

Section 53 (1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the Act, the notice is deemed to be changed to be the earliest date that complies with the section.

Conclusion

Based on the evidence and the testimony discussed above, I dismiss the tenant's application without leave.

I hereby grant the landlord an Order of Possession effective Tuesday, July 31, 2012. The tenant must be served with the order of possession. Should the tenant 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: July 18, 2012.

Residential Tenancy Branch