



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This was the hearing of the tenant's application to cancel a Notice to End Tenancy and to obtain a repair order. The hearing was conducted by conference call. The tenant participated with her advocate and the landlord's representative attended the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause be cancelled?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began in 2009. The tenant shared the rental unit with another occupant until the occupant moved at the end of December, 2009. The tenant found another room-mate to share the rental unit with her commencing in March, 2010. According to a written submission from the tenant's advocate a tenancy agreement was created, naming the room-mate, Mr. K as a tenant. The tenant did not provide a copy of the tenancy agreement and the landlord's representative said that there was no new tenancy agreement and that Mr. K was not a named tenant in any tenancy agreement.

On March 19, 2012 there was a fire in the rental unit. The fire was caused by Mr. K who was smoking in the bedroom of the rental unit. The rental property suffered extensive damage due to the fire and water damage from the sprinkler system in the rental unit that was activated by the fire. The water damaged apartments on the floors below the fifth floor rental unit.

In a March 19, 2012 notice to tenants the landlord said:

As directed by the Insurance Adjuster during the site assessment tour conducted on the afternoon of March 19th, these suites (#504, 404, 304 and 204 must be vacated to allow for the proper restoration and repair of the suites so that they may be repaired to allow occupancy again at a later date.

Currently, the repair time estimate is approximately 6-weeks.

Please arrange to vacate your suite as soon as possible so that the restoration crews from (name of restoration company) may proceed with the in-suite drying process being set-up for Tuesday afternoon, March 20th.

The landlord sent a letter to the tenant dated March 22, 2012. In the letter the landlord said that: "It was confirmed by the City Fire Inspector that the fire was caused by smoking within the bedroom of your suite." The landlord went on to say:

This event has caused significant damage to the building, and a lot of cost and disruption to the other affected tenants of suites 404, 304, 204, 104 and B3. The incident was avoidable. Allowing smoking in a bedroom during sleeping hours jeopardizes the health and the safety of the entire building and its residents.

Currently we must advise you that we are investigating any legal options that we may have to gain recovery of certain costs from you, including the insurance claim deductibles.

We are also reviewing the Landlord's options with regard to your continued tenancy for suite 504.

After the fire on March 19th the tenant vacated the rental unit and took up residence with an occupant of another suite in the rental property.

On April 20, 2012 the tenant sent an e-mail to the landlord. She said in part: "As I stated to (name of landlord's representative) during our phone conversation of March 22, 2012 and Brad (building manager) I intended to continue occupancy of my suite after repairs. Please let me know when the restoration process is to be completed and I may move back in to my suite."

The landlord's representative responded by e-mail dated June 30, 2012 wherein he said:

We understand that you continue to ask about updates on the suite that you formally (sic) occupied. Please understand that the damage and required restoration is very extensive and expensive. The fire created a lot of extra added costs for the building owners.

Our position is that you.... as the primary tenant for this suite have a certain level of responsibility for the repair costs for the fire and water damage.

We have discussed the issues and costs with our legal representatives.

We have determined that you will NOT be permitted to return to this suite as a tenant of the building. In addition we are working on the relevant court documents to issue to you accordingly as soon as these documents can be produced.

The landlord refunded a portion of the March rent and returned the tenant's security deposit. The tenant cashed both cheques.

The landlord was of the view that the tenant acknowledged that the tenancy was over when she accepted the refund of her security deposit. When the landlord learned that the tenant took the position that there was a continuing tenancy and that she is entitled to return to the rental unit when the landlord completes the repair and renovation process, the landlord served the tenant with a one month Notice to End Tenancy for cause. The Notice was given to the tenant on August 25, 2012. The Notice to End Tenancy alleged that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; that she seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and that she caused extraordinary damage to the rental unit or residential property.

The landlord testified that the fire and water damage caused by the fire was significant and extensive. Not only was the rental unit damaged to the extent that it had to be completely rebuilt, other suites were damaged and had to be vacated. The landlord produced copies of building permits from the City of Vancouver to show the extent of the work. The landlord's representative said that the work was not yet completed and it would be several more months before the units are ready for occupancy.

In her written submissions the tenant said that there was a small fire in the rental unit she smelled smoke and then woke up the occupant, Mr. K and evacuated the rental unit. Mr. K's face was burned in the fire. The tenant said that she received: "no prior indication or warning that there was a fire or smoke". The tenant said that the fire suppression system activated and extinguished the fire after she left the rental unit. She said that there was minor damage caused by the fire, but there was water damage caused by the sprinkler system. The tenant complained that the rental unit did not have a smoke alarm and she submitted that had there been a working smoke alarm it would have alerted her to the presence of a fire and afforded her an opportunity to extinguish the fire before the sprinkler system was activated. The tenant also complained that the

landlord did not have a monitored fire alarm and suggested that this delayed the fire department's arrival at the scene. She suggested that had there been a monitored fire alarm system, the fire department might have arrived before the sprinkler system activated and they might have prevented this activation from occurring.

The tenant's written argument also included submissions concerning the doctrine of frustration. The tenant's position is that the fire and damage to the rental unit rendered it only temporally uninhabitable and did not constitute a frustrating event ending the tenancy agreement. The tenant submitted that the work performed by the landlord and the landlord's estimate of repair costs includes amounts unrelated to the fire. She said that there was pre-existing mould and the landlord was performing renovations and upgrades to the rental property unrelated to the fire. Her position was that the damage was mostly due to water from the fire suppression system and to mould.

Analysis and conclusion

The issue before me on this application is whether the one month Notice to End Tenancy for cause should be upheld or whether it should be set aside. The matter of frustration of the tenancy contract is not an issue in this proceeding and I make no finding with respect to it.

The facts establish that Mr. K was an occupant of the rental unit with the express permission of the tenant. On March 19, 2012 he was smoking in the bedroom of the rental unit and apparently fell asleep or became unconscious. Due to his carelessness a fire started in the rental unit. The tenant smelled smoke. She woke Mr. K and left the unit. The tenant did not attempt to extinguish the fire. The fire was extinguished when the sprinkler system was activated.

The landlord's Notice to End Tenancy for cause was based upon four grounds pursuant to section 47 (1) of the *Residential Tenancy Act*, namely:

- (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, or
 - (iii) put the landlord's property at significant risk;

And that :

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

The tenant's position is that the fire damage was trivial and the more extensive water damage was not the tenant's fault. I do not agree with and do not accept the tenant's submissions on this point. She contended that the absence of a smoke alarm and the absence of a monitored alarm system led to the activation of the sprinkler system which caused the extensive damage. I find this submission to be mere speculation on the tenant's part. It is the case that the carelessness of a person permitted to be in the rental unit by the tenant resulted in a fire and that fire activated the sprinkler system. The fire and the water damage that resulted from it caused occupants in four suites to be forced to vacate their units for a number of months. The landlord has suffered a loss of revenue and has been put to significant expense to effect repairs. I find that the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit and to the residential property. I find as well that the actions of the tenant's guest have significantly interfered with and unreasonably disturbed other occupants of the rental property because those occupants were compelled to vacate their rental units due to the fire and water damage.

I find that the Notice to End Tenancy the subject of this application was validly given and that there are ample grounds to justify the Notice to End Tenancy. I decline to set aside the Notice to End Tenancy and I find that the tenancy has ended pursuant to the Notice. The landlord has possession of the rental unit and an order for possession is not required. The tenant's application to cancel the Notice to End Tenancy and for a repair order is dismissed without leave to reapply.

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 7, 2012.

Residential Tenancy Branch