

A matter regarding Astoria Hotel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The undisputed testimony shows that this single room occupancy tenancy began on July 30, 2012, monthly rent is \$450.00 and the tenant paid a security deposit of \$225.00.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause, pursuant to section 47 of the Act. The Notice was dated January 25, 2013, listing an effective end of tenancy date of February 28, 2013. The landlord said it was delivered to the tenant on that date, by leaving it with the tenant.

The causes listed on the Notice alleged the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord and has caused extraordinary damage to the rental unit.

The landlord, in support of the Notice, said that on January 25, 2013, the front desk manager viewed the tenant on the closed circuit television system monitoring the premises climb a ladder to the cable junction box, at which point he was observed altering the wiring.

The front desk manager approached the tenant at the rental unit to speak with him about the illegal wiring, at which point the manager observed that the smoke detector in the rental unit had been removed.

The manager reported this matter to the controller, who directed the tenant to reattach the smoke detector to the rental unit's ceiling.

The manager said that the tenant began yelling and using profane language.

On January 31, 2013, the landlord said that the smoke detector was replaced and now the tenant has taken down that smoke detector.

In explanation as to why it was essential that each room in the residential property contained a functioning smoke detector, the manager said that it was a life safety issue, threatening the safety of all 88 occupants in a single room occupancy situation.

The manager said that the city monitored the premises regularly to ensure that smoke detectors were in each room.

The manager said that despite the requests of the landlord, the tenant refuses to keep the smoke detector attached.

The landlord's two witnesses, who were not in the hearing until their testimony, each confirmed the landlord's testimony as to the events as stated.

In response, the tenant said the smoke detector was not working and that it was he who brought this to the attention of the landlord 4-5 months ago.

The tenant said that the malfunctioning smoke detector kept beeping all night, disturbing his sleep. The tenant said the latest smoke detector was not new and that it kept beeping all night as well.

When questioned, the tenant affirmed that he had not issued any written complaints to the landlord.

In response, the landlord said he had never been notified by the tenant that the smoke detector did not work.

The landlord's relevant evidence included a picture showing the missing smoke detector in the tenant's ceiling.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Once the tenant made an application to dispute the Notice issued pursuant to section 47 of the Act, the burden of proof is on the landlord to prove the causes listed on the Notice.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant significantly interfered with or unreasonably disturbed another occupant of the landlord and has caused extraordinary damage to the rental unit.

In reaching this conclusion I find the landlord provided credible and consistent evidence which led me to find that on a balance of probabilities the actions of the tenant in removing and preventing the smoke detector from functioning properly has endangered the safety of the other occupants.

I find a reasonable person would fear for their safety and security of in a single room occupancy hotel, and that removing the smoke detector has caused the extraordinary damage.

I do not accept the evidence of the tenant that the smoke detector was malfunctioning due to never having submitted the landlord written notices.

Considering the totality of the evidence, I find that the landlord has substantiated the cause listed on the Notice and I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply.

Under Section 55 (1) of the Act, if a tenant's application to cancel a Notice has been dismissed, I may grant the landlord an order of possession.

As the landlord has made a request for vacant possession of the rental unit, I grant the landlord an Order of Possession effective 2 days after service of the Order upon the tenant. I have not made the order of possession for the rental unit effective for the date listed on the Notice as the landlord will not receive this Decision prior to the effective date, due to the date of the hearing.

I have enclosed an order of possession with the landlord's Decision. This order is a final, legally binding order, and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court should the tenant fail to comply with the terms of the order. Costs of such enforcement may be recoverable from the tenant.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord is granted an order of possession, effective two days after service upon the tenant.

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 27, 2013

Residential Tenancy Branch