



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the landlord's building manager (the building manager) handed him the 1 Month Notice on April 29, 2013. The landlord's property manager (the property manager) confirmed that on May 4, 2013, the landlord received a copy of the tenant's dispute resolution hearing package sent by the tenant's advocate by registered mail. I am satisfied that the parties served the above documents and their evidence packages to one another in accordance with the *Act*.

At the hearing, the property manager made an oral request for an end to this tenancy and the issuance of an Order of Possession on the basis of the 1 Month Notice if the tenant's application to dismiss the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy with non-profit housing society commenced on October 1, 2002. The tenant's portion of the monthly rent is currently set at \$375.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$300.00 security deposit paid when this tenancy began.

The landlord issued the 1 Month Notice following an April 23, 2013 incident in which the tenant struck a sprinkler head in his rental unit and caused a major flood in this multi-tenanted rental property. Damage from this incident was severe and the landlord

submitted receipts, invoices and estimates in excess of \$200,000.00 to conduct repairs following this incident. The property manager gave undisputed sworn testimony that the elevator remains in the process of repairs and that the eventual total cost to repair the damage caused by this incident will exceed \$300,000.00. The landlord's representatives at the hearing testified that the tenant's actions have led to major disruptions and inconvenience to other tenants in this building. In the landlord's written evidence, the landlord also noted that the above estimates do not include losses that other tenants in the building suffered that may or may not be insured.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by May 31, 2013. The landlord's 1 Month Notice cited the following reasons for ending this tenancy:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant has caused extraordinary damage to the unit/site or property/park....

At the hearing, the building manager who issued the 1 Month Notice testified that the tenant has not engaged in any illegal activity. On this basis, I advised the parties that I would not consider the three grounds cited in the landlord's 1 Month Notice that would require the landlord to demonstrate that the tenant had engaged in illegal activity. The landlord's representatives at the hearing confirmed that the principal reason for seeking the end to this tenancy resulted from the extraordinary damage caused by the tenant's actions on April 23, 2013. They also cited the tenant's hoarding and unwillingness to keep his rental unit free of debris and materials had become a problem in efforts to deal with pest infestations in this rental building. They also testified that the property manager and some of the staff of the landlord felt threatened by the tenant on various occasions.

The tenant gave sworn testimony that he inadvertently broke the sprinkler head in his room and activated the sprinkler system when he awoke in the morning and saw a

cockroach running across his ceiling. He said that he grabbed one of his tennis shoes and swatted at the cockroach which was running into a hole in the ceiling. He testified that he was very sorry for the damage and disruption caused to the rental building and to the other tenants. He issued a written apology to the building manager and the other tenants in the building.

The tenant's advocate described the tenant as being a broad-shouldered and strong man of 5 feet 2 inches to 5 feet 5 inches. He attributed the damage to a design flaw in the sprinkler system. He maintained that the sprinkler head should have been protected by some type of wire mesh covering to prevent accidents such as this one from happening. He also noted that the tenant had apologized to the building manager if he had presented as being aggressive when he spoke with him. The tenant's advocate who has known the tenant for over ten years said that the tenant had never taken any physical action against anyone to the advocate's best knowledge. The tenant's advocate also noted that the landlord had never sent the advocate notification of pending pesticide treatment for pests or the persistent cockroaches. As such, he claimed that the tenant, who cannot read was unable to properly prepare for these treatments. The tenant's advocate also conceded that he had never made any formal written request to the landlord to have documents of this type forwarded to him (i.e., the tenant's advocate).

The building manager testified that the tenant broke off the sprinkler head in his rental unit causing immediate and serious damage to the rental property which was subjected to sudden flood from the sprinkler system. He described the tenant's actions as reckless and careless. He testified that the ceiling is 7 feet high and the damage caused to the sprinkler head, exposed only a few inches from the surface of the ceiling, would have had to have been caused by considerable force to cause the sprinkler head to rupture. He entered into written evidence a copy of an email exchange with the manager of the restoration company involved in the repairs to this rental property. This email confirmed the building manager's assertion that considerable force would have needed to have been applied to the sprinkler head to cause this type of damage.

The building manager also called a witness from the restoration company who happened to be on site that day. This witness gave sworn testimony that he was familiar with this situation and the sprinkler system that had been damaged. This witness testified that the sprinkler head was designed to "take quite a bit of force" and that it was very unlikely that someone could inadvertently rupture the sprinkler head. He said it would take an unusual degree of "blunt force" to break these sprinkler heads. In response to questions about any protective coverings that are used to protect sprinkler heads, the witness said that the sprinkler heads in these types of buildings are

not designed to have protective coverings of any type. He said that he had never seen protective coverings installed on these types of sprinkler heads.

At the hearing, the tenant testified that it may be time “to move away” from this rental property and that he would likely move in with a family member in the short term if required to end this tenancy.

Analysis

The following provisions of section 47 of the *Act* allow a landlord to end a tenancy for cause for any of the following reasons, which remained in the landlord's application once the building manager admitted that the tenant was not involved in any illegal activity.

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

(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,...or

(iii) put the landlord's property at significant risk;...

(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;...

Although the parties presented sworn oral testimony and written evidence with respect to the tenant's alleged hoarding behaviours and his interactions with the landlord's representatives, the principal reason for the landlord's issuance of the 1 Month Notice was the damage caused by the tenant on April 23, 2013. As such, I have first considered that portion of the landlord's 1 Month Notice, and given only secondary attention to the other portions of the landlord's 1 Month Notice.

At the hearing, there was no dispute that the extensive flooding damage occurred as a result of the tenant's rupture of the sprinkler head in his rental unit. The magnitude of the flooding damage was not contested by the tenant or his advocate. In fact, over a month after the incident of April 23, 2013, the building manager testified the repair work to both the tenant's rental unit and the elevator has not yet been completed. The

elevator remains inoperable. The landlord's representatives did not dispute the tenant's sincerity in expressing his remorse for what happened.

In considering whether the damage caused by the tenant was a simple unfortunate accident, I have tried to envision the force required by a 5 foot 2 inch to 5 foot 5 inch male to break a sprinkler head on a 7 foot ceiling. At the very least, this seems like a very careless action to try to swat a cockroach with a shoe in such close proximity to the sprinkler head. While the tenant may not have appreciated the potential side effects of his actions, I am hesitant to accept that this was an unfortunate accident. Although I doubt that this was a purposeful action of vandalism, the reality is that the tenant did not recognize that his actions at the time were reckless and were placing the landlord's investment and the contents of tenants in this building in jeopardy. Some of the landlord's losses were no doubt covered by insurance. I doubt whether all tenants whose belongings were damaged in this flooding incident had similar insurance coverage.

I have also considered the claim by the tenant's advocate that the tenant was victimized by a faulty design feature of the sprinkler system. Other than his speculation, the tenant's advocate provided little real evidence to demonstrate that other buildings use sprinkler heads with protective coverings of the type he was suggesting should have been in place in this rental building. The building manager, and two officials from the restoration company involved in repairing the damage caused by the tenant on April 23, 2013, gave evidence that protective coverings of the type suggested by the tenant's advocate are by no means the standard in residential rental buildings. I find the tenant responsible for the damage he caused to the sprinkler head causing a major flood and damage to his rental building. I reject the tenant's advocate's position that the design of the sprinkler system was even partially responsible for the damage resulting from the tenant's actions.

In their written evidence and at the hearing, the landlords maintained that the tenant's needs extend beyond those that can be met through this independent living building. They gave undisputed testimony that the tenant is often away when the support worker who is supposed to help him with housekeeping attends his rental unit. He has not prepared his rental unit for pesticide treatment leading to a continuation of pest problems in this building, at last some of which may be centered in his rental unit.

Under these circumstances, I find that the tenant is likely correct in his own assessment that perhaps it is time for him to seek alternate housing. His needs may in fact be better met in a different type of facility. The property manager and the tenant's advocate have tried to assist the tenant in his search for alternate housing better suited to his

increasing needs. Although sympathetic to the difficulties that the tenant may face in relocating from a rental property he has called home since 2002, I find that the damage caused by this incident is extraordinary, even if unintentional. His lack of recognition of the recklessness of his behaviour in trying to kill an insect so close to the sprinkler system calls into question his ability to identify other potentially dangerous results of his actions. Despite the serious damage caused to property in this incident, no one was injured as a result of the tenant's actions. This may not be the case in the future should this tenancy be allowed to continue and the tenant display similar recklessness in the future.

For the above reasons, I am satisfied that the landlord had adequate reasons to issue the 1 Month Notice as the tenant's actions have put the landlord's property at significant risk and caused extraordinary damage to his rental building. I therefore dismiss the tenant's application to cancel the 1 Month Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application to cancel the landlord's 1 Month Notice, I grant the landlord's request for an Order of Possession based on the 1 Month Notice. The effective date identified on the landlord's 1 Month Notice was May 31, 2013. Due to the timing of this hearing, the very short time period that would be allowed to vacate the rental unit in accordance with the 1 Month Notice and the longevity of this tenancy, I am granting the tenant some additional time to vacate the rental unit. However, I have also taken into consideration the property manager's sworn testimony that the restoration company conducting repairs to this rental building has been unable to complete work on the tenant's rental unit because of his refusal to vacate the premises, even for a short time, or to remove enough of his belongings from the rental unit to enable them to complete their work.

Under these circumstances and after balancing the landlord's needs to complete this needed repair work with the tenant's desire to have sufficient time to find new accommodations, I grant an Order of Possession to the landlord effective **7 days after service of this Order** on the tenant.

Conclusion

I dismiss the tenant's application to set aside the landlord's 1 Month Notice with the effect that this tenancy ends on the effective date of that Notice. I allow the landlord's oral request for an end to this tenancy and issue an Order of Possession to the landlord **to take effect 7 days after service of this Order on the tenant**. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 29, 2013

Residential Tenancy Branch

