



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Southvan Foundation and False Creek Management (2006) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, OPT, AAT

Introduction

This was a hearing with respect to the tenant's application to cancel a Notice to End Tenancy for cause. The hearing was held at the Residential Tenancy Office in Burnaby. The tenant attended with his representative. The landlord's three named representatives attended on behalf of the landlord.

Preliminary Matter

The landlord's representatives have expressed misgivings about dealing with the tenant's representative and they have questioned whether he is properly authorized to represent and act on behalf of the tenant. The tenant's representative is an accountant and a long standing acquaintance of the tenant. He testified that he has been appointed to act on behalf of the tenant pursuant to a power of attorney granted by the tenant. I find that the tenant's representative is a proper person to represent the tenant and to act as his agent in matters related to the tenancy.

Issue(s) to be Decided

Should the one month Notice to End Tenancy for cause be cancelled?

Background and Evidence

The rental property is an apartment building in Vancouver. The landlord provides subsidized housing for senior citizens in the rental property. The tenant is 75. He has lived in the rental unit for 12 years.

On June 13, 2013 around 3:00 A.M. there was a fire in the bathroom of the rental unit. The landlord's representative, Ms. L.G. who is the relief site manager was present at the rental property after the fire occurred. According to her written statement, when she arrived at the rental unit the door was open and the tenant was not present in the unit. She said in her statement that the apartment and hallways were full of black smoke. The fire had started in the bathroom of the rental unit. The counter and tap fixtures melted from the heat and there was water flooding into the unit from the leaking pipes. The smoke detector was hanging down from the ceiling by its wires, but according to

her, it was disconnected. She said one of the firemen handed the smoke detector to her. Ms. L.G. said that she found the tenant in the parking lot: "running around aimlessly, confused, unable to explain what happened.. The tenant was hospitalized after the fire.

On June 13, 2013 the landlord issued a one month Notice to End Tenancy for cause. The Notice purported to require that the tenant move out of the rental unit on the day it was given, namely: June 13, 2013 rather than on the earliest acceptable effective date for a one month Notice to End Tenancy, which would have been on July 31, 2013. The cause alleged by the Notice to End Tenancy was that the tenant has caused extraordinary damage to the rental unit or the property. The Notice to End Tenancy was not served on the tenant; it was given to a health care worker involved with the tenant's care. After he received the Notice to End Tenancy and while in the hospital, the tenant filed his application for dispute resolution on July 8, 2013.

The landlord's property manager, Mr. J.C. deposed in a statement dated July 18, 2013 that:

Based on the report from the relief site caretaker, I understood the following facts to be true:

- The fire started in the bathroom area of (the rental unit)
- The relief caretaker was alerted to the fire by other tenants not (name of tenant)
- The relief caretaker arrived at the suite and the tenant was not present
- The in-suite smoke alarm was disconnected. One of the fire fighters present handed it to the relief site manager and confirmed that that they had found it hanging from the ceiling but electrically disconnected.
- The tenant was acting in a strange and irrational manner wandering aimless around the parking lot. He was observed rolling up the walk-off mats in the lobby, placing the interior decorative plants out on the sidewalk, and the proceed to write words on the dusty hoods of cars parked in the parking area.
- The suite, when I saw it was cluttered to an unacceptable level. This represented a serious fire risk.
- I also observed, after the fire crews left, that there was a table lamp, minus shade, located in the clothes closet, with the bare bulb located in the midst of clothes hanging there. I believed this to be a secondary fire risk.

Based on the above described facts, it was decided that in our opinion, the tenant had somehow caused this damage in the suite, and furthermore, by disconnecting the smoke alarm and having a large amount of clutter in the suite, had put the neighboring tenants at significant risk. As such, we issued a notice to end the tenancy for cause, according to sections 47(1)(d)(iii) and 47(1)(f) of the Residential Tenancy Act. (reproduced as written)

I note that the Notice to End Tenancy that was given by the landlord and submitted as documentary evidence on this application, stated only one ground for ending the tenancy, not two as stated by the landlord's representative in the excerpt reproduced above.

The landlord's representative said in his statement that the rental unit is not presently habitable. He estimated that repairs would be complete by August 31, 2013, but at the hearing he said that it might not be ready for occupancy until the end of September.

The landlord has removed all the tenant's belongings from the rental unit. The landlord's representative said that they have been placed in two secure off-site storage lockers. The landlord provided a key to the lockers to a hospital social worker involved with the tenant's care.

The tenant submitted a copy of the Fire Incident Report from the City of Vancouver. According to the report, the fire was an accidental electrical fire; the: "Probable fire cause was electrical arcing in north terminal in the vanity light ignited plastic lens dropping onto vanity top"

The incident report noted the following damage:

- Extensive fire and heat damage to vanity area of the bathroom
- Moderate smoke damage to entire suite (number of suite) and contents
- Slight water damage to suite (numbers of two suites below the rental unit)

The tenant submitted a letter from the hospital social worker dated July 18, 2013. She said that:

This letter is to confirm that (name of tenant) (Date of Birth June 12, 1938) is an in-patient at Vancouver General Hospital.

(Name of Tenant) has been in the hospital since June 13th, 2013, when he was admitted due to a fire in his apartment. Prior to admission, (name of tenant) was functioning adequately with support from the Community Health Unit. Upon discharge from hospital all required supports will be initiated.

The tenant submitted a copy of an e-mail exchange between the landlord's property manager and the hospital social worker. In an e-mail dated July 5, 2013 sent to the landlord's property manager, Ms. S.M. said:

As per our conversation on the telephone re: the cause of the fire at (address of rental unit) here is the fire report stating that the probable cause of the fire was electrical arcing.

I have also spoken directly to Fire and Rescue services and they informed me that this sort of fire is strictly electrical and not human caused.

Due to the fire occurring June 13th, 2013 and being contained to the bathroom-primarily the vanity area, what is a reasonable turn around time to have the suite inhabited? When damage has occurred to BC Housing suite and someone cannot return until the renovations are complete what is the protocol for B Housing supplying alternate housing?

As well the resident is aware of the attempt to have him evicted based on the prior belief that he caused the fire; however the Notice to End Tenancy has not been properly given to him.

The property manager responded by return e-mail. In his e-mail he reiterated his position that the landlord had cause to end the tenancy, notwithstanding the fire report. The property manager said in part as follows:

You've advised our office that you will be discharging (name of tenant). This decision is not within the purview of our office, nor of (name of Landlord). As such, we will bear no responsibility related to that decision. Should you elect to discharge (name of Tenant), do not rely on (name of landlord) to provide housing to (name of tenant), as he will not be permitted to reside at the building. The risk to other residents of the building is simply too great for our office to allow this to happen.

(Name of landlord) has a mandate to provide housing to senior citizens who are able to live independently, and in our opinion, (name of tenant) requires a level of care and supervision that the building is unable to provide.

At the hearing the landlord's representative maintained his position that the landlord had cause to end the tenancy and that the tenant was not a suitable resident because of his opinion that he could not live independently.

The tenant through his representative denied that he had tampered with or disconnected the smoke alarm, although that was not a ground alleged in the Notice to End Tenancy that is in dispute on this application. The tenant's representative testified that he has visited the rental unit both before and after the fire. He stated his view that if the rental was disordered it was as a result of the fire and the number of people who had been in the rental unit and moved things about. He testified that the tenant's unit was not unacceptably cluttered before the fire occurred.

Analysis

During the hearing the parties were invited to discuss a resolution of the matters raised by the tenant's application and the other issues with respect to the tenancy, including the tenant's return to the rental unit; these discussion proved fruitless.

The landlord has not provided any convincing evidence to show that the tenant has caused extraordinary damage to the rental unit or to the rental property. The fire investigation report determined that the fire was caused by an electrical fault in a florescent light fixture. There is no basis for the landlord's one month Notice to End Tenancy and I therefore order that it be, and is hereby cancelled. There is an ongoing tenancy and the landlord has the obligation to put the tenant back into possession of the rental unit as soon as possible.

The landlord has alleged that the tenant is not capable of living independently, but the tenant's social worker considers that the tenant is fit to return to his occupancy of the rental unit. I consider the concerns stated by the landlord to be speculative at best.

The tenant is at liberty to make a further application and seek additional relief if he has reason to believe that the landlord is not acting promptly and in good faith to repair the rental unit and return possession to him.

Conclusion

The tenant's application is granted. The one month Notice to End Tenancy for cause dated June 13, 2013 has been cancelled and there is a valid and subsisting tenancy. The landlord is directed to forthwith perform necessary repairs and return possession of the rental unit to 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: August 6, 2013

Residential Tenancy Branch

