



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker City Centre
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC; MNDC; FF

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a *One Month Notice to End Tenancy for Cause* issued July 4, 2013 (the "Notice"); for compensation under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The hearing process was explained and the participants were asked if they had any questions. The parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that the Tenant served the Landlords with the Notice of Hearing documents by registered mail. It was also determined that the parties exchanged their documentary evidence. I described the contents of each party's documentary evidence and the other party acknowledged receipt of the documents described.

Preliminary Matters

Neither party provided a copy of the tenancy agreement in evidence, although both parties had copies of the tenancy agreement. The Landlords are alleging on the Notice that the Tenant has breached a material term of the tenancy agreement and therefore, I ordered the Landlords to provide me with a copy of the tenancy agreement. The Landlords provided the tenancy agreement on August 14, 2013.

The Landlords' agent JH issued the Notice as agent of the corporate Landlord. Therefore, I amended the Tenant's application to include the corporate Landlord.

Background and Evidence

This tenancy began on July 15, 2007. Monthly rent is \$2,900.00 due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,450.00 at the beginning of the tenancy.

The Landlord's agent (JH) gave the following affirmed testimony:

- The Tenant is smoking marijuana and cigarettes in the rental unit and on the balcony of the rental unit. This is against the tenancy agreement and the strata bylaws.
- The Tenant signed a Form K at the beginning of the tenancy, agreeing to abide by the strata bylaws.
- The Tenant has been warned to stop smoking but continues to smoke. The owners of the rental unit have been fined a total of \$1,200.00 so far because of the Tenant's refusal to comply with the bylaw. The Landlords provided the notices of the fines to the Tenant, but he refuses to pay the fines.
- The Tenant's smoking has caused damage to the rental unit due to the odor which has permeated the walls and carpets.
- The Tenant's smoking is putting other occupants' health and lawful rights in jeopardy.
- The Landlord served the Tenant with the Notice on July 4, 2013, by posting the Notice to the Tenant's door.
- The Landlords seek an Order of Possession.

The Tenant gave the following affirmed testimony:

- The Tenant is not smoking inside the rental unit. The Tenant uses marijuana for medicinal purposes, but does not smoke inside the rental unit. He quit smoking cigarettes three weeks ago. He used to smoke cigarettes on the balcony, but he was allowed to do so under the tenancy agreement that he signed in 2007 and therefore he should have been be "grandfathered" and allowed to continue to smoke on the balcony.
- The Tenant does not remember signing a Form K agreeing to abide by the strata bylaws. He received a letter regarding the fines, but no invoice.
- The Tenant was without air conditioning for the whole summer last year and was without heat from September, 2012 until January, 2013. He had to purchase a heater in order to stay warm. The Landlords cut open the ceiling in the rental unit to access the air conditioning and to repair the heating in January, 2013. The Tenant now has heat and air conditioning, but the ceiling in the rental unit has not been repaired and there are exposed 220 volt wires hanging down.
- From February, 2013 until July, 2013, the Tenant was unable to use one of his two toilets because it was broken. The Landlords were advised, but did not fix it.

The other toilet was not working properly and had to be flushed by removing the tank cover and lifting the chain manually.

- The Tenant's sink required repairs, but the Landlords wouldn't fix it, so he repaired it himself at a cost of \$200.00.
- The Tenant seeks compensation in the equivalent of four month's rent for devaluation of the tenancy.

JH gave the following reply:

- It was unfortunate that the Tenant was without heat for four months, but it was not caused by the Landlords. The supplier was late providing parts. The building is really well insulated, so the rental unit was probably not very cold.
- The Tenant's photographs are old and not an accurate depiction of how the ceiling looks now. The ceiling has been patched and is just waiting for an access panel.

Analysis

The Landlords seek to end the tenancy because the Tenant has:

- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
- caused extraordinary damage to the rental unit; and
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find that the Landlords did not provide sufficient evidence that the Tenant's smoking has **seriously** jeopardized the health or safety or lawful right of another occupant of the Landlord, or that it has caused **extraordinary** damage to the rental unit. **However, I do find that the third reason for ending the tenancy has been proven by the Landlord.**

In September, 2012, the strata corporation changed its bylaw with respect to smoking, to state, "No smoking is permitted on the strata plan. This includes inside strata lots and on balconies." The Tenant does not dispute that he is aware of the smoking ban, only that he believes he should have been allowed to smoke because his tenancy agreement allows smoking on his balcony.

The Tenant signed a Form K when he signed his tenancy agreement on June 30, 2007, which states in part:

Under the Strata Property Act, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).

The current bylaws and rules may be changed by the strata corporation, and if they are changed, the tenant **must** comply with the changed bylaws and rules.

Section 55(1) of the Act states:

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.

Based on the testimony of the parties, I am satisfied that the Notice was posted to the Tenant's door on July 4, 2013. Therefore, I find that the effective date of the end of the tenancy is August 31, 2013. Pursuant to the provisions of Section 55(1) of the Act, I hereby provide the Landlords with an Order of Possession **effective 1:00 p.m., August 31, 2013.**

Section 67 of the Act states:

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 32(1) of the Act states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the testimony of the parties, I find that the Landlords failed to comply with the provisions of Section 32 of the Act in a timely fashion and that the tenancy was devalued as a result. I find that the Tenant is entitled to compensation for the Landlords' breach of Section 32 of the Act; however, I find that the Tenant's claim is excessive. I allow the Tenant compensation in the amount of **\$2,900.00** for this part of his application (25% of monthly rent for 4 months).

The Tenant has been partially successful in his application and I find that he is entitled to recover half of the cost of the filing fee from the Landlord, in the amount of **\$50.00**.

Conclusion

I hereby provide the Landlords with an Order of Possession **effective 1:00 p.m., August 31, 2013**, for service upon the Tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Tenant with a Monetary Order in the amount of **\$2,950.00** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: August 15, 2013

Residential Tenancy Branch