



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Preliminary Issues

At the outset of this proceeding the male Tenant stated that the female Tenant would not be attending this proceeding and that she was not in the room with him. During the course of this proceeding the female Tenant was heard speaking in the room with the male Tenant. The female Tenant did not provide testimony during the course of this proceeding even though the opportunity was presented to the male Tenant to ask if the female Tenant had anything she wished to add to this proceeding.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 30, 2013, by the Tenants to cancel a Notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Tenant confirmed receipt of all of the Landlord's evidence. The Landlord indicated that neither she nor her Agent received evidence from the Tenant. The Tenant testified that he served the Agent with all of his evidence and that the Agent told him that the Landlord was out of town and would not be getting the papers.

The Tenants' evidence included copies of the following: the tenancy agreement; move in condition inspection report form; a warning letter received from the Landlord which has a hand written date of September 16, 2013 at the top; the 1 Month Notice for cause; and a notice to all tenants that also has the date September 16, 2013 written at the top.

Based on the contents of the Tenant's evidence I informed the parties that I would consider any relevant documents in my decision. Neither party objected and I proceeded with the hearing.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy for cause issued September 23, 2013 be upheld or cancelled?
2. If cancelled, did the Landlord appear at the hearing and make an oral request for an Order of Possession?

Background and Evidence

The terms of the tenancy were undisputed. The parties entered into a written month to month tenancy that began on July 1, 2013 and rent of \$450.00 is due on or before the first of each month. On July 1, 2013, the Tenants paid 225.00 as the security deposit and \$100.00 as the pet deposit.

The Landlord testified that approximately two weeks into the tenancy she attended the rental unit with an electrician to install a wall electrical outlet and a new stove. However, when they arrived the house was in such "disarray" and had a foul odour that the electrician refused to stay and install the outlet and simply hard wired the oven. The Tenants were given permission to have one cat and one fish tank for pets; however, during her first visit she noticed that they had one cat, two fish tanks, and a cage with pet crabs. She requested the Tenants put the home in order and remove the unapproved "live stock". She informed them that she would be returning in a few weeks to conduct another inspection.

The Landlord stated that when she returned for the inspection in early August 2013, she found cat feces on the floor in the bathroom, and a piece of cardboard on the floor of a closet / cupboard which was soaked and covered in cat urine. She indicated that there was a powerful smell of urine in the unit and the appearance of several flies. She told the Tenants a second time to clean up the unit and that she would be returning in a few weeks to conduct another inspection. When she returned in September the unit condition had gotten worse. There were now cat feces on piles of clothes throughout the unit and the smell was permeating in to the hall or common areas. She issued the Tenants a warning letter on approximately September 16, 2013, which states they need to take action immediately. Then, when no action was taken she had her agent serve them with the 1 Month eviction notice on September 23, 2013.

During these weeks she said the Tenant contacted the fire inspector who attended and reported that the unit was at risk of fire because there were too many flammable items stored close to the baseboard heaters. She pointed to her photos which show the cigarette butts spread on the carpet and the cat feces attached to clothing in the bathroom. The Tenant was upset that they were taking these photos and he asked the Landlord what the problem was. He stated that this is how they live.

The Landlord indicated that she had provided evidence of complaint letters she received from other tenants. Since serving the Notice she was notified that the Tenants have requested to cancel their hydro account as of October 31, 2013. Furthermore, one of her other tenants has provided her with notice to end their tenancy if these Tenants were not being evicted.

The Landlord submitted that she has been in contact with different government ministries to seek assistance for these tenants but she is told that they cannot help because the Tenants do not want help. She stated that she attended this proceeding to ask that the eviction Notice be upheld and that she be granted an Order so she can evict the Tenants.

The Tenant stated that he did not recall receiving the warning letter and then later confirmed that he provided a copy of it in his evidence with his notes written on it. He confirmed that he called the B.C. Safety Inspector and the only issue he had was that the stove was not to code because it was hard wired and did not have a receptacle plug.

The Tenant argued that the Landlord's evidence should not be upheld because she did not tell everything how it was. For example, the stove was installed on July 14th not July 12th. Also, while he has four fish tanks only one tank currently has water and fish in it. The other three are empty. He confirmed that he has a cat and some pet crabs in a special cage but his pet mice are currently staying at his friends house.

The Tenant stated that he did clean up his apartment when asked and since October 13, 2013, he removed the cardboard box that the cat was using as a litter box. He purchased some baking soda and placed that where the cat's box is now. He also moved the boxes to the other side of the room and they are no longer a problem.

The Tenant raised the issue that his rent is paid directly by the Ministry to the Landlord and his November 2013 rent was cashed by the Landlord near the end of October. Therefore, he does not have any money to move right now. He confirmed that since getting the eviction notice he has never been told that he could stay living in that unit.

Rather, he has been told the opposite from the Landlord's Agent who keeps telling him to just pack his stuff and move out.

In closing, the Landlord confirmed that she has cashed the rent cheque for November because they are still living there and she did not know how long this process will be dragged out. She argued that she served the Notice in September and that he should have moved out at the end of October but this hearing was not scheduled until November 7, 2013. During any conversation since issuing the notice they have clearly indicated to the Tenant that they want them to move. She is of the opinion that she will work out the money with the Ministry once she has these Tenants moved out.

Analysis

I have carefully considered the aforementioned and the documentary evidence submitted by each party.

Upon review of the 1 Month Notice to End Tenancy issued September 23, 2013, I find the effective date of the Notice to be automatically corrected to October 31, 2013, pursuant to section 53 of the Act. Furthermore, I find that it was served upon the Tenants in a manner that complies with the Act. The Notice was issued listing the following reasons:

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

- *Significantly interfered with or unreasonable disturbed another occupant or the landlord*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord*
- *Put the landlord's property at significant risk*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

I accept the Landlord's evidence and testimony that they took all reasonable steps to inform the Tenants that they must remove the extra pets (everything other than one cat and one fish tank), clean up the unit to comply with fire regulations; remove the foul odors; and clean up the cat feces and urine. I also accept the submissions that the condition of the rental unit has gotten progressively worse which has caused other tenants to lose the quiet enjoyment of the common areas and their own units; therefore significantly interfering with or unreasonably disturbing another occupant or the landlord.

Notwithstanding the above, the Tenants took it upon themselves to bring in the fire inspector who provided a report to the Landlord which supports her concerns of a fire hazard.

Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice and therefore the Notice is upheld and the Tenants' application to set aside the Notice is dismissed.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective June 30, 2012, the effective date of the 1 Month Notice.

Upon review of the Tenants' rent payment for November 2013, I find that the Landlord was at liberty to accept payment for use and occupancy due to the administrative back log of hearing times with the *Residential Tenancy Branch*. As noted above this tenancy ended **October 31, 2013**, in accordance with the 1 Month Notice and the Tenants continue to reside in the unit. Accordingly, I find the Landlord is entitled to the November 2013 payment for use and occupancy of the unit and for any loss of rent for the remainder of November 2013 that may be incurred while cleaning and searching for replacement tenants, once these Tenants have vacated.

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court 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: November 07, 2013

Residential Tenancy Branch

