



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trusty Sales Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant confirmed that no documentary evidence was submitted and that he had received the Landlord's documentary evidence package. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

The Landlord clarified in her direct testimony at the beginning of the hearing that they wish to have the 1 month notice to end tenancy upheld and to receive an order of possession.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Background and Evidence

Neither party has submitted a copy of the 1 month notice to end tenancy issued for cause, but both parties have confirmed the contents of the notice during the hearing in their direct testimony. As such, the hearing shall proceed based upon the following agreed facts.

The Landlord served the Tenant with a 1 month notice to end tenancy for cause dated November 27, 2013 in person on the same date. The notice displays an effective end

of tenancy date of December 31, 2013. Both parties agreed that their were two reasons for cause listed.

- 1) Tenant or a person permitted on the property has, or is likely to put the Landlord's property at significant risk.
- 2) Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

During the hearing, the Landlord clarified that there was no illegal activity stating that this selection (#2) was made in error and wishes to withdraw this reason for cause. As such no further action is required for the second reason for cause.

The Tenant states that the Landlord is making false statements against him. The Landlord states that on November 18, 2013 she smelled smoked in the hallway, in front of unit #103. The Landlord states that after they, "pounded on the door" and getting no response entered the rental unit to discover the Tenant passed out/asleep on the couch with a pot on the stove which was smoking and had burned with a hole in the pot. The Tenant confirmed this in his direct testimony stating that he was boiling potatoes and fell asleep. The Landlord states that the pot was so burned that there was a hole in the bottom of the pot because it had melted away. The Landlord also states that upon inspection it was noticed that the installed smoke detector was removed. The Tenant confirmed in his direct testimony that he had removed the smoke detector because it often is triggered from steam. The Tenant admits that all of the circumstances, but disputes that this is an issue that warrants eviction. The Landlord has provided copies of two letters from friends who were visiting at the time and who can confirm the circumstances.

Analysis

I accept the undisputed testimony of both parties and find that the Tenant has failed to establish a claim to cancel the notice to end tenancy issued for cause. The Tenant's direct testimony contradicts the details of his written application. I find that I prefer the evidence submitted by the Landlord over that of the Tenant. I find that falling asleep leaving the stove on with a pot to burn through to be putting the Landlord's property at risk, especially as the Tenant had disconnected the smoke alarm and fell asleep leaving the pot unattended. The Tenant's Application is dismissed. The Landlord is granted an order of possession. As the effective end of tenancy date has elapsed on the 1 month notice to end tenancy issued for cause dated November 27, 2013, the effective date is two days after it is served upon the Tenant. The Landlord must serve the Tenant with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia an enforced as an order of that Court.

Conclusion

The Tenant's Application is dismissed.
The Landlord is granted an order of possession.

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: January 24, 2014

Residential Tenancy Branch

