



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF
 MT CNQ

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on February 19, 2014 seeking an Order of Possession for cause and to recover the cost of the filing fee from the Tenant for their application.

The Tenant filed on January 29, 2014, seeking more time to make his application to cancel a Notice and to obtain an Order to cancel a Notice to end tenancy issued because tenant does not qualify for subsidized housing.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. 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 issued for cause on January 16, 2014 be upheld or cancelled?
2. Has the Tenant proven he had extenuating circumstances that prevented him from filing his application to dispute the Notice within the required timeframes?
3. Has the Tenant been served a Notice to end tenancy for reasons that he no longer qualifies for subsidized housing?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on November 1, 2003 and switched to a month to month tenancy after October 31, 2004. Rent is payable on the first of each month and began at \$1,200.00 per month. The rent was subsequently increased to \$1,430.00. The Tenant paid \$600.00 on October 21, 2004 as the security deposit.

It was also undisputed that the Landlord served the Tenant a 1 Month Notice to end tenancy for Cause by e-mail and by registered mail on January 16, 2014. The reasons indicated on the 1 Month Notice were that the Tenant or a person permitted on the property by the tenant has: seriously jeopardized the health or safety or lawful right of another occupant or the landlord and has put the landlord's property at significant risk.

The Landlord testified that since approximately 2007 the Tenant has had his mother and his girlfriend residing in the unit. The Tenant's mother is elderly and does not speak English. The Landlord has not seen the girlfriend around lately so she does not know if she is still residing in the unit. The Landlord said that she does not believe the Tenant has been living in the apartment because he seems to be out of the country all the time and has told her that he is working out of the country. The Landlord indicated that she normally communicates with the Tenant by e-mail to discuss the issues relating to his mother's behaviours.

The Landlord pointed to various e-mail communications from May and June 2013, which were provided in her evidence, where she attempted to resolve the issues about the Tenant's mother's behaviour. She argued that she has been working with the Tenant about these issues for several years and it has gotten to the point where the owner is concerned for his unit. She stated that she has been receiving complaints from the Strata that the Tenant's mother has been breaking into storage lockers, removing other tenant's possessions and placing her possessions inside in her attempts to take over the lockers. She has also attempted to take over lockers that may be vacant in her attempts to store the items she is collecting. His mother has also been storing stuff just outside her door, in the common hallway, and in the lobby. Other tenants have now complained about the presence of bugs and risks of fire hazards.

The Landlord reiterated that the Tenant's mother does not speak English and she is left unattended to reside in this building. She has been seen picking up garbage and bringing it inside the building. The Strata called a disposal company to remove some of the items and the Tenant's mother attempted to block them, as shown in the photo she provided in evidence.

The Landlord submitted evidence of inspection reports to support her statements that when they inform the Tenant of the problem he shows up just to clean up the mess and remove the clutter to avoid an eviction. This is displayed in the November 2012 inspection which indicates "the entire unit is a fire hazard, then on April 11, 2012 (sic)

showing some progress being made, then March 5, 2013 that shows the condition being okay but “no insurance”. This changed for the inspection done on September 25, 2013, which indicates the following:

Bedroom is full of clothing piled up close to the ceiling. Unable to walk around end of bed as it is blocked with clothing piled three feet high

Solarium is full of material; possible fire hazard

While the January 8, 2014 inspection states:

*Bedroom is full of clothing piled up close to the ceiling. Unable to walk around end of bed as it is blocked with clothing piled three feet high – **no change***

*Solarium is full of material; possible fire hazard- **no change***
[my emphasis added by bold].

The Landlord pointed to a letter sent to her by the Tenant on July 15, 2013 where he admits that there are five problems with his Mother residing in the building. He listed those problems under the headings of (1) Blocking the fire hazard, (2) Keeping the garbage, depositing on the corridor; (3) Harassing persons in this building; (4) Occupying the other lockers; and (5) unsafe and language barriers (sic).

The Landlord argued that they attempted to work this out with the Tenant again, however this time he failed to meet with her as promised. Initially the Tenant met with her and assured her that he would try and get his Mother's stuff moved out. But in the recent year(s) the Tenant keeps putting this situation and the Landlord off, saying he will meet with her when he is back from his business trips but then he never contacts her. The Landlord stated that they have done all they can to try and work with this situation, and now the Strata has said they are going to start issuing the Landlord fines. The Tenant's mother's behaviour continues to escalate and she is now approaching other tenants. So now they wish this tenancy to end and for them to be granted an Order of Possession.

The Tenant testified and confirmed that he primarily works out of the country and that his mother has been residing in the rental unit since approximately 2008. He said he thought he added her to the tenancy agreement but did not have any papers that would support that. He also confirmed that his ex-wife, not his girlfriend, resided with his mother for a few years. His ex-wife moved out about one year ago. He argued that his tenancy has been long term, since 2003, and he has always had a good relationship with the Landlord.

The Tenant stated that his mother is 80 years old and does not speak English. He stated that he had no comments and that he agreed with the Landlord's statements. He said his mother does not have good habits and she does collect stuff and argued that her behaviours are the result of her experience with severe poverty that was really bad.

He said he tried to explain to his mother that she is living in this building that requires certain behaviour but she is stubborn. They are cleaning up her stuff now that he is back in town. He stated that they did not arrange to have anyone look after his mother while he is away but they do have a friend that checks in on her once in a while.

The Tenant submitted that his mother does not understand that she will have an inspection every three months so she does not know to move her stuff out before the inspection. The Tenant spoke about the July 2013 letter he wrote to the Landlord, as referenced above, which is also when his brother was visiting his mother.

The Landlord clarified that the health hazards are presented because there have been reports of bugs being seen amongst the Tenant's mother's clutter. When I asked the Landlord to explain what she was saying when she said "clutter", she stated that she did not want to come right out and say the Tenant's mother was a hoarder, but her behaviours certainly represent that. The mother has jeopardized other tenant's and the Landlord's lawful right by her actions of breaking into and taking over other tenant's and the Landlord's storage lockers; and she is putting the property at risk because of the fire hazard being caused with blocking the fire sprinklers and restricting access in her rental unit around all of her possessions.

The Tenant provided testimony in regards to his Application and stated that he was not seeking more time to make his application; rather, he was wanting more time so he could return to the country and deal with this matter. He confirmed that he did not get served a notice regarding not qualifying for a subsidized unit and argued that he is disputing the eviction notice that he was issued January 16, 2014.

The Landlord stated that she was willing to work towards a settlement agreement with the Tenant if he agreed to end the tenancy and move out by April 30, 2014. The offer was put forth to the Tenant who began to ask questions about when the possessions would have to be out and indicating that he thought the offer was to allow the tenancy to continue.

I explained to the Tenant that the Landlord's offer was only to extend the eviction to the end of April 2014 but that it would require him moving his mother and himself completely out and they would have to find another place to live. The Tenant then asked if a settlement agreement could be reviewed or if he could file a judicial review on a settlement agreement. At this point I explained to the parties that it was not clear to me that the Tenant understood the settlement process so this hearing would be conducted as an arbitration hearing as originally applied for by each party who filed their Application for Dispute Resolution.

In closing, the Landlord stated that she was saddened that the Tenant's behaviour has not changed and that he continues to expect that his mother can reside in the unit if he removes her possessions before each inspection, despite her behaviour or despite how it affects the other tenants or the Landlord's property.

Analysis

I have carefully considered the foregoing and all documentary evidence before me. On a balance of probabilities I find as follows:

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas. In order to find a tenancy is in place I must be satisfied that the parties meet the definition of landlord and tenant.

In this case the evidence supports the Applicant Landlord entered into a written tenancy agreement with the Respondent Tenant for a tenancy that commenced on November 1, 2003. The Tenant allowed his mother to move into the rental unit and there is no evidence before me that would suggest his mother was added to the tenancy agreement.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, I find the named respondent to this dispute is the Tenant and his mother is an occupant.

Upon review of the 1 Month Notice to End Tenancy issued January 16, 2014. I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

The Notice was served by registered mail and e-mail and is deemed to have been received on January 21, 2014, pursuant to section 90 of the Act. The effective date of the Notice is **February 28, 2014**, in accordance with section 53 of the *Act*.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

In this case there is undisputed evidence that the Tenant allowed other occupants to reside in the rental unit; his mother and his ex-wife. Furthermore, the Tenant confirmed that his mother: blocked the fire hazard; kept garbage, deposited garbage in the corridor; has harassed other persons in the building; has broken into and occupied other storage lockers; and has displayed unsafe living habits; and has a language barrier. He also confirmed that his ex-wife has not resided in the unit for approximately one year and that his mother is left alone in the rental property for long periods of time while he is working outside of the country.

The evidence further supports that the Landlord has provided ample notice to the Tenant to have the matters regarding his mother's behaviour resolved. However, the Tenant seems to operate with the understanding that everything will be okay as long as the clutter is removed just prior to each inspection and that his mother can carry on with her behaviours until it is time for another inspection.

I accept the Landlord's evidence that a person permitted on the property by the Tenant, the Tenant's mother has seriously jeopardized the health or safety of other tenants or the landlord by having clutter piled so high in the rental unit that it is obstructing the fire suppression sprinklers; that the Tenant's mother seriously jeopardized the lawful right of another occupant or the landlord by breaking into other tenant's storage units, attempting to take them over along with other temporarily vacant storage units; and that the Tenant's mother has put the landlord's property at significant risk by bringing in garbage with bugs and by blocking the fire suppression system with clutter.

Based on the aforementioned, I hereby find the Landlord provided sufficient evidence to uphold the 1 Month Notice to end this tenancy in accordance with section 47 of the Act.

The Tenant confirmed that he was not seeking more time and he was not served a Notice to end tenancy because he did not qualify for subsidized housing.

Based on the above, I dismiss the Tenant's application to cancel the 1 Month Notice and I grant the Landlord an Order of Possession.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Conclusion

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 Tenant.

The Landlord may withhold the one time award for the filing fee of **\$50.00** from the Tenant's security deposit.

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

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: March 19, 2014

Residential Tenancy Branch

