



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS INTERNATIONAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC RP

Introduction

This hearing was convened in response to an application by the tenant to cancel a notice to end tenancy for cause and for the landlord to make certain repairs. Both tenants, an advocate and a legal advocate for the tenants, an agent for the landlord and two representatives for the landlord participated in the teleconference hearing.

Both parties acknowledged receiving the evidence of the other. Despite the abundance of evidence, the parties were advised that only *relevant* evidence would be considered for the Decision. The parties were permitted to discuss their dispute with a view to settling their matter. However, the hearing advanced on the merits. I have reviewed all the evidence before me, inclusive of all testimony, that met the requirements of the rules of procedure. However, the parties were advised that only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the landlord be ordered to make repairs?
Is the notice to end tenancy valid?
Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy started in July 2013. The applicants SW and DJ are co-tenants. On March 21, 2014, the landlord served the tenants with a notice to end tenancy for cause (the Notice). The Notice indicates that the reasons for ending the tenancy are as follows: (1) the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; (2) put the landlord's property at significant risk; and

(3) the tenant has caused extraordinary damage to the unit. The landlord bears the burden of establishing they issued a valid Notice to End for valid reasons.

Landlord's Evidence

The landlord's agent stated that on March 18, 2014 the tenant's suite endured a kitchen fire in which cooking oil overheated, catching fire; and that the tenants were able to put out themselves with a quantity of water - thus going unreported to the landlord or fire authorities. The landlord originally attended the rental unit due to a strong odour of smoke on the tenant's (10th) floor of their building. Upon their attendance it was additionally noted that the fixed smoke detector unit had been removed from the ceiling and appeared taken apart, and the building fire alarm system had not activated – the landlord suspected this to be the result of the smoke detector's removal. The landlord also noted a lamp with its cord strung across the stove covered in soot from the fire as well as a soot-covered adjacent wall and kitchen cabinets and general surrounding area. The landlord stressed that had the tenants not suppressed the fire it could have been much worse. The landlord testified that given the tenant told them they put out a cooking oil fire with water, the landlord claims the tenants were "lucky" in putting out the fire and that the consequences could easily have been dire for the tenants and other occupants of the building, and the building itself. The landlord provided a quote from a restoration company stating that the remedial costs for the damage from the fire amounted to more than \$7500.00 which the landlord is bearing themselves and not seeking from the tenant. It must be noted that the landlord has active insurance for such occurrences.

The landlord testified they have lost confidence in the tenants. They fear the tenants are not mindful of some of their choices and that unsafe conduct could lead to greater safety infractions with more severe consequences. The landlord testified that, altogether, they consider the reasons for issuing the Notice to End accurately reflect the stated reasons in the Notice.

In the hearing, the landlord orally requested an Order of Possession. The landlord testified that if their Notice were upheld they would be agreeable if it were effective later than the effective date of the Notice.

Tenant's Response

Tenant SW testified that on March 18, 2014 they placed cooking oil to heat on their stove and proceeded to leave their 10th floor unit to make food purchases on the ground level of their building. They do not positively recall on which burner setting they left the

oil receptacle, however the tenant claims they were gone a short period of time – possibly “only 3 or 4 minutes”. SW further testified they left their 92 year old co-tenant, DJ, aware of the situation in the kitchen.

DJ testified that they remember being pushed into action when the cooking oil on the stove suddenly caught fire and they used a pot of water to douse the oil. DJ stated the water and oil bubbled over the pot and the mixture caused a great deal of smoke and sooty deposits; however, this effort successfully put out the flaming oil. SW stated he was not present during any of these events but referred to his co-tenant’s actions as, “heroic” in the face of, “an accident”, and possibly saved the building from greater catastrophe. The tenants deny removing the smoke detector from its placement.

During the hearing, the parties discussed the tenant’s claim on application for repairs to the unit. The parties agreed that the bulk of the tenant’s requests for repairs have been addressed and that co-operation between the parties is critical to fulfilling any remaining repair and future repair concerns – to their mutual benefit. It was further agreed that despite any accommodation issues the tenant may have, they may not hinder the landlord from satisfying any ‘orders’ by local government Inspectors within the time for the landlord to do so. It must be noted that to this end, the landlord offered the tenants the use of another hotel suite in the same building during any renovation or repair period and that this offer prevails in order for the landlord to comply with a current local government ‘order’ of repairs to the fire damaged kitchen, by May 29, 2014.

During closing submissions, the tenant’s advocate stated that in the event I were to uphold the landlord’s Notice to End and grant the landlord’s oral request for an Order of Possession that the tenants be given several months to arrange new accommodations.

Analysis

I find that both parties presented clear, credible testimony, in response to all the relevant evidence in this matter. On preponderance of all the relevant evidence, I find that the notice to end tenancy is valid on the basis that the conduct of the tenant respecting all their choices in regards to the subject cooking oil and cooking oil fire incident placed the landlord’s property at significant risk; and that the same conduct of the tenant clearly culminated in a fire causing extraordinary damage to the unit. I find that what the tenants refer to as *an accident* – while not contemplated - has given the landlord justifiable concern for the safety of their other tenants and their property.

The landlord orally requested an order of possession in the hearing, and I accordingly must grant an **Order of Possession**.

From the evidence of both parties, I am satisfied that an order compelling the landlord to make certain repairs is not required, and **I dismiss** this portion of the tenant's claim, without leave to reapply.

Conclusion

The tenant's application **is dismissed**.

In accordance with the parties' complimentary requests I grant the landlord an **Order of Possession** effective **on or before September 30, 2014**. The tenant must be served 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 and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: June 06, 2014

Residential Tenancy Branch

