



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding L.L.A. INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 1, 2014, by the Landlord to end the tenancy early and obtain an Order of Possession.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony that the Tenant was served with copies of their application, the Notice of Hearing, and their evidence, on October 6, 2014 when they were posted to the Tenant's door. Based on the submission of the Landlord I find the Tenant was deemed served Notice of this proceeding on October 9, 2014, three days after it was posted, in accordance with section 90 of the Act. Accordingly, I proceeded in the Tenant's absence.

Issue(s) to be Decided

Has the Landlord proven entitlement to end this tenancy early, and to obtain Order of Possession?

Background and Evidence

The Landlord submitted documentary evidence which consisted of copies of: the tenancy agreement; a 1 Month Notice issued for cause on September 23, 2014; a letter issued from the Municipality on September 22, 2014; and an email from a pest control company dated September 26, 2014.

The evidence supports that the parties executed a fixed term tenancy agreement that commenced on December 1, 2013 and is set to switch to a month to month tenancy after November 31 [sic] 2014. Rent of \$590.00 is payable on the first of each month and on December 1, 2013 the Tenant paid \$295.00 as the security deposit.

The Landlord provided oral testimony that he has been the property manager of this property since May 2014. He stated that because of the construction of this apartment/motel style building they undergo random fire inspections. The Landlord said the fire inspector first attended their building in June 2014 and was not able to gain access to the Tenant's unit. The fire inspector returned on September 15, 2014, with two police

officers to conduct a second random fire inspection. The Landlord stated that the police officers were in attendance to keep the peace and to ensure the fire inspector was able to gain access to all rental units.

The Landlord argued that the Tenant initially refused the fire inspector access but when the police got involved they entered the rental unit to find it filled with possessions and debris. The Landlord submitted that the fire inspector noted that the smoke detector had been removed and disarmed and the room was filled with possessions that were piled to the ceiling and the unit was completely infested with cockroaches. The Landlord stated that the police told him that they suspected that the Tenant was suffering from mental health issues and the police called for "car 27" for mental health support. The Landlord said the support never came.

The Landlord testified that he discussed the health issues and smoke detector requirements with the Tenant and then gave the Tenant a letter advising the Tenant he had three days to clean up his rental unit. The Landlord could not testify to the actual contents of the letter or the date it was posted to the Tenant's door. He said he contacted the Tenant's social worker but she has not done anything to assist the Tenant move out.

The Landlord stated that he attempted to gain entry into the unit after issuing the Tenant a 1 Month Notice for cause on September 23, 2014, but the Tenant refused him access and appears to have barricaded himself inside the unit. The Landlord confirmed that the 1 Month Notice was issued 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

The Landlord pointed to the email received from the pest control company which supports that they tried to treat the unit for cockroaches on September 26, 2014. He argued that the pest control technician determined that the Landlord should rid the unit of the debris and possessions in order to treat the unit properly.

In closing, the Landlord stated that he applied for an early end to tenancy in order to be scheduled for an earlier arbitration hearing as he had the letter issued from the Deputy Chief to rely upon as evidence.

The Letter written by the Deputy Chief states that the rental unit had "excessive fire loads and the occupants have failed to remove fire loads and have been given sufficient time from Surrey Fire Service" and "Fire Services supports landlord's request to end a tenancy without full notice as the tenant or the tenant's guests have seriously jeopardized the safety and interests of the landlord or other occupants and firefighters by removing their smoke alarms". Although the municipal letter indicates that their Fire

Services department had issued orders to comply with the BC Fire Code the Landlord stated that he had never seen those orders.

Analysis

Section 56 of the *Act* allows a tenancy to be ended early, without waiting for the effective date of a one month Notice to End Tenancy, if the Landlord can prove the high statutory requirement that the tenant(s) have breached their obligations under the tenancy agreement or *Act* **and** it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

Section 32(2) of the *Act* requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 29 of the act provides restrictions for the right of a landlord to enter a rental unit while Section 28 of the Act provides entitlement for all tenants to the right of quiet enjoyment.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the Tenant has significantly breached sections 32, 28 and 29 of the *Act* by tampering with the smoke detector, storing too many possessions inside his rental unit that created a breeding ground for cockroaches. All are reasons to end the tenancy pursuant to section 47 of the Act, after issuance of a 1 Month Notice for Cause.

Next, I have considered whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect. I am not satisfied that the Landlord has met the burden of showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. I am satisfied that there may be cause to end this tenancy pursuant to section 47 of the *Act*; however, I do not find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect.

I make this finding for several reasons. First of all, the evidence supports that the fire inspector did not gain access to the Tenant's rental unit in June 2014; therefore, September 15, 2014, was the first time the inspector gained access to Tenant's unit. Notwithstanding the Landlord's submission that he told the Tenant he had 3 days to remove his possessions and ready his unit for pest control treatment, there was insufficient evidence to support that the Tenant was given written notice to remove the excess possessions or written instructions to the Tenant advising him not remove the smoke detector. Furthermore, there was no evidence to support the Tenant was provided written instructions and ample notice to prepare his unit for pest control treatment.

In addition to the foregoing, the evidence supports that the fire inspection took place September 15, 2014, and the Fire Chief's letter to support the Landlord's application for eviction was not written until 7 days later. The Landlord served the Tenant a 1 Month

Notice to end tenancy on September 23, 2014, and then waited 8 days until he filed his application to end the tenancy early, without notice. That being said, the Landlord and Fire Chief's delay in responding to this issues support my findings that this matter does not meet the high statutory requirement that it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy. Accordingly, I dismiss the Landlord's application.

Conclusion

I HEREBY DISMISS the Landlord's application for an early end of tenancy, without leave to reapply.

The 1 Month Notice to end tenancy issued for Cause on September 23, 2014, is of full forced and effect.

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: October 24, 2014

Residential Tenancy Branch

