



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated September 25, 2014 with an effective end of tenancy date of October 31, 2014.

The Notice claims that the tenant or a person permitted on the property by him has put the landlord's property at significant risk and that the tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable time after being given written notice to do so. Either ground is a valid ground for eviction under s. 47 of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the Notice was given for good cause?

Background and Evidence

The rental unit is a bachelor suite in a subsidized housing apartment building. The tenant has lived there since September 1999, over fifteen years. His current monthly rent is \$320.00 per month.

The landlord's agent Ms. T. testifies that the tenant is storing so many personal possessions in the suite as to pose a significant risk of fire and a significant risk to timely repair in the event of a flood.

Ms. T. described a timeline starting in August 2011 when, after an inspection, the tenant's premises were deemed a fire risk and the tenant was directed to reduce the clutter.

It appears the tenant made some effort and was using an empty garage space as a storage area. The garage space had not been assigned to him

In October 2013 another inspection resulted in another warning letter. Again in November 2013 a follow up inspection resulted in a third warning letter. Photographs from the November inspection confirm a great amount of clutter composed largely of furniture, boxes, bins and bags. At least two boxes are resting on the bathtub. The kitchen area appears confined by household effects but accessible.

In early February 2014 the landlord conducted another inspection. Ms. T. reports that the rental unit was still extremely cluttered and in her view, a fire risk. Photographs taken at the time show a very narrow passage from the front door due to boxes and bins stacked to one side. The central living area is shown to contain a pile of household goods like kitchen chairs, a table and perhaps end tables stacked in front of the kitchen area. A photo of the bathroom shows that it is messy but apparently fully useable.

Ms. T. says she re-attended on February 18th and could not enter past the front door without having to crawl over boxes. The tenant was sent another letter, dated February 19th, telling him he must find alternate storage or dispose of the excess as the suite could be considered a fire hazard. She directed that he clear boxes, bags and clothing from the living/bedroom area and keep it clean and tidy. She directed that he reduce the clutter by at least 60%. She further directed that the tenant remove all boxes and containers from the bath tub and storage boxes from the bathroom.

In April another inspection was conducted but conditions had not improved according to Ms. T.. There was clutter to the extent that physical entry to the suite was, she says, not possible. Another warning letter was sent.

On May 6th Ms. T. conducted another inspection, this time with representatives from the Vancouver Fire Department and the City of Vancouver. She says the fire department person had to climb into the unit to assess it. There was no egress or escape route to the window nor could one move a stretcher around in the unit. The tenant was sent a warning letter but this time also received a notice of violation from City of Vancouver Fire Rescue Services. Dated May 21st, the notice required the tenant to "clear combustibles to create clear means of egress ... reduce amount of combustibles" and noted "consult priority action plan" and "Vancouver coastal health will assist."

On June 18th the landlord conducted another inspection, again with members of the fire department and the City. According to Ms. T. there appeared to have been little improvement. She noted that the suite was considered a fire hazard.

After that the tenant engaged or accepted the help of the “Vancouver Hoarding Action Response Team” and improvement were made. An inspection on July 23rd shows “slight improvement” according to Ms. T. From the photos taken at the time it appears that the tenant had succeeded in creating passageways from the door to the window and to the kitchen area. The bathroom appears to have been largely free of boxes or stored items. The fridge is what can only be described as foul. There appears to be dried blood pooled in its bottom, spilling over onto the floor in front of the fridge.

The landlord’s “final warning” letter of July 24th noted a slight improvement but that the minimum requirements that had been outlined had not been met. The letter went on that the unit “is still considered to be extremely unsanitary, cluttered and does not meet our minimum level of cleanliness.” The letter informed the tenant that he was in serious breach of a material term of the tenancy agreement and the statutory requirement to maintain reasonable health, cleanliness and sanitary standards.

The landlord’s July 24th letter set out ten requirements the tenant was required to meet by September 23rd :

1. Bedroom/living room to be cleared of boxes, bags, clothes, etc and kept clean and tidy for use as a living room/bedroom. You need to reduce the amount of clutter by at least 60%.
2. The bathroom should be not used as a storage room. Remove all storage items immediately from the tub.
3. Create and maintain a clear passage from the front door of your unit to the window (30 inches minimum).
4. Items must not be piled over 4 feet in height.
5. Clear pathways through all hallways.
6. Clear items from the stove and clear items from the kitchen counters.
7. Remove all items from the communal corridor. This is a fire hazard.
8. Replace bathroom internal door.
9. Clear items from all heat sources-heaters, stoves, baseboards etc.
10. Kitchen – stove, fridge, counter tops, cupboards and floor are to be cleaned. Food to be kept in containers.

The rental unit was inspected on September 23rd. According to Ms. T., the bedroom/living room had items stored over four feet. She considered the extent of the clutter to be a fire hazard. The bedroom/living room was being used for storage with boxes, clothes, excessive furniture, “IT” equipment (computer housings and screens), paper and plastic bins. The kitchen counter was covered, there was garbage by the cupboards, old food boxes/bottles/bags were not thrown away. Obstacles prevented full examination of the kitchen. She considered it to be a fire hazard. In the bathroom the bathtub was full of boxes and access to the toilet was obstructed. It was Ms. T.’s opinion that if there were a flood it would be impossible to carry out repairs. The photos

from September 23rd show the premises to be more cluttered than the July 23rd photos. The tub is not easily accessible. The toilet has a number of obstacles in front of it which would have to be moved to use it. The sink has something red spilled on its lip and down the basin. Clothes and household items are still stacked in front of the kitchen. There may be access to the sink and stove but it is a narrow pathway along the stack of belongings.

The landlord's representative Mr. T. claims the tenant is using a toilet in the common area of the building and showering at the residence of friends.

It is clear that the condition of the premises on September 23rd degraded from the condition found on July 23rd. The bathroom was even more cluttered than prior to June. The pathways created pursuant the fire rescue notice had been reduced..

The landlord filed material regarding the premises after the date of the eviction Notice but I consider that evidence to be of little help in determining whether there were grounds for eviction as of the date of the Notice.

The tenant is a man of about sixty years. His total annual income is about \$10,000. He is disabled due to a severe neck injury, cannot lift more than about 6 kilograms and is incapable of repetitive lifting. He suffers from chronic pain and is under a doctor's care for degenerative disc disease. He claims to suffer from anxiety.

He disputes some of the allegations regarding his suite. He says the landlord's photos are misleading; that there exists access to the kitchen and to the windows. The belongings, he says, are his household goods and personal effects from the home he and his former wife shared prior to 1999 and his move to this rental unit. The material shown in the landlord's photos, household goods and furniture, appears to bear this out. He maintains that he has been unable to go through it all over the last fifteen years and discard unneeded or unwanted items. He denies that entry to the suite was ever blocked by stored items.

The tenant says that when he first moved in he had permission to store his belongings in the building but it was revoked at some time. He says the help offered by the landlord in removing and disposing of the goods was only fleeting, a few hours. He says he was storing his belonging offsite but that the rental cost of the storage unit became too much for him to afford. He says his brother will be offering him assistance at the end of this month.

In reply, Ms. T. reasserted that the landlord has repeatedly offered assistance to pare down the items being stored but tenant has difficulty choosing.

Analysis

The ending of a tenancy is a very serious matter. A landlord alleging cause must provide cogent, convincing evidence that one more of the authorized grounds for eviction are present.

There appear to be two aspects to the landlord's evidence. First, the allegation that the clutter in the tenant's rental unit poses a fire hazard and perhaps a rescue hazard. The second appears to be the claim that the tenant is in breach of a material term on his tenancy agreement by failing to keep his premises reasonably clean and sanitary.

The evidence of the May 21st notice from the Fire Rescue Services, makes it clear that the state of the premises on May 6th was a hazard. Directions were given to "clear combustibles to create clear means of egress ... reduce amount of combustibles." It is apparent that the tenant took steps to achieve this goal by the July 23rd inspection. Whether his efforts brought him into compliance with the Fire Rescue Services directive is not known. It does not appear that Fire Rescue Services has re-attended to confirm compliance.

The tenant was directed by the landlord not to pile things over four feet. The importance of that particular height was not explained.

It is apparent from the evidence that after the July 23rd inspection the tenant added to the clutter as it existed on July 23rd, but, again, no opinion about it has been rendered by Fire Rescue Services.

Ms. T. has given her opinion that the clutter continues to be fire hazard and I have the evidence of the photographs. Ms. T.'s opinion is valuable, yet, even combined with the other evidence, it does not enable me to determine beyond mere speculation that the clutter shown to have existed at the September 23rd inspection is a fire or safety hazard. Nor is it clear what "combustibles" the Fire Rescue Services notice was referring to. Perhaps there is a definition somewhere indicating what a "combustible" is for the purposes of the Fire Rescue Services notice, but it was not mentioned at this hearing.

Speculation is not a sufficient basis for sustaining an eviction notice. I find that it has not been established on a balance of probabilities that the clutter in the tenant's suite on September 23rd posed a fire hazard or safety risk. The landlord is free to re-examine

the suite with a Rescue Services person, a bylaw inspector or a member of the fire department and obtain a definite opinion about it and, if appropriate, issue another eviction notice.

I agree with Ms. T. that the clutter in the bathroom and, perhaps, the kitchen as well, could pose an impediment to gaining access to the plumbing in the tenant's suite in the unlikely event of a water leak. As such it poses a risk the landlord's property by threatening to increase the level of damage done in such an event. However, to justify and eviction, such a risk must be shown to be a "significant risk" to the landlord's property and that has not been shown here. For example, having to move boxes out of a bathtub to gain access to a leak would be a minor delay in my view.

I have no hesitation in finding that the tenant has failed to "maintain reasonable health, cleanliness and sanitary standards throughout the rental unit" as required by s.32 of the *Act*. The photos show that the floor in the kitchen area has likely never been cleaned. It has the appearance of a workshop floor. It is unlikely that the flooring beneath the stored goods has been cleaned in years. Photos of the kitchen area do not show any particular uncleanliness but, if the photo of the refrigerator is to be used as an example, the tenant's cleaning efforts fallen far below the standard expected in a rental unit. The fact of the large red spill on the bathroom sink may be explained away by the tenant saying he cut his hand, but the photo was taken after he had been given lawful notice by the landlord to enter and inspect. His failure to attend to this simple cleaning task before the arrival of the landlord's representatives for a formal inspection speaks volumes about his general habits.

The tenant is in breach of s. 32 of the *Act* and s.32 is a condition imported as a term of every tenancy agreement.

In order for the tenant to be evicted for breach of a term of a tenancy agreement it must be shown that the term is a "material term" and that the tenant has been given written notice and a reasonable opportunity to cure the breach. In this case, the landlord's warning letter of July 24th was clear written notice to cure the breach by attending to cleaning the suite. The landlord gave the tenant to September 23rd to do so, which I find to be a more than reasonable length of time in these circumstances.

" A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement." (Residential Tenancy Policy Guideline #8 "Unconscionable and Material Terms)

It cannot be said that even the most trivial breach of a tenant's duty to maintain reasonable health, cleanliness and sanitary standards would give a landlord the right to end the tenancy. While that duty is a term of the tenancy it is not a *material term* and the breach of it cannot found an eviction notice.

The proper remedy in this situation is an order that the tenant bring the rental unit up to the required standards. If the tenant fails to comply the landlord may issue a Notice to End Tenancy pursuant to s. 47(1)(l) of the *Act*, for failure to comply with an order of the director.

I hereby order that the tenant attend to or arrange for cleaning as follows:

- a) Kitchen area: stove, fridge, countertops, cupboards and floor to be clean.
- b) Bedroom/living room: floor to be clean/vacuumed. Boxes, furnishings, bags or other stored items to be moved or removed to permit any necessary cleaning/vacuuming.
- c) Bathroom: tub, toilet, sink and floor to be clean.

I direct and order that all the aforesaid cleaning be completed within thirty (30) days following service of this decision on the tenant in accordance with s. 88 of the *Act*. After that the landlord is free to serve notice and inspect and in the event this order has not been complied with, the landlord may served a one month Notice to End Tenancy pursuant to s. 47(1)(l) of the *Act*.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated September 25, 2014 is cancelled.

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 17, 2014

Residential Tenancy Branch

