



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN GENERAL PROPERTY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to sections 47 and 55;
- a monetary order for damage pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1348 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord's agent provided sworn, uncontested testimony that on 27 September 2014 she served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) by posting it on the door. This posting was witnessed by the relief manager for the building. On the basis of this evidence, I am satisfied that the tenant was served with the 1 Month Notice on 30 September 2014, the third day after its posting, pursuant to sections 88 and 90 of the Act.

The landlord's agent testified that she served the tenant with the dispute resolution package personally on 23 October 2014. The landlord provided me with a witness statement signed by the relief manager that sets out the same. On the basis of this evidence, I am satisfied that the tenant was properly served with notice of this application pursuant to sections 89 and 90 of the Act.

The landlord's agent also testified that she provided both of the above-noted documents to a seniors' advocacy group that had assisted the tenant in the past. The advocacy group alerted the landlord's agent that they would not be assisting the tenant with these proceedings.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and text messages, and the uncontested, sworn testimony of the landlord's agent, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

This tenancy began 16 June 2010. The tenancy agreement provided that rent of \$700.00 was due on the first of the month. The landlord's agent testified that she collected \$725.00 in deposits (i.e., security deposit, pet deposit and key deposit) from the tenant at the beginning of the tenancy, and that the landlord continues to hold the tenant's security deposit of \$350.00. The landlord issued two subsequent rent increases, the most recent of which raised the monthly rent to \$735.00.

The landlord's agent provided a copy of the 1 Month Notice provided to the tenant. The 1 Month Notice is dated 27 September 2014 and has an effective date of 31 October 2014. The 1 Month Notice sets out the following reasons for cause:

- the tenant or person permitted on the property by the tenant has seriously jeopardized the health and safety of another occupant or the landlord;
- the tenant or person permitted on the property by the tenant has put the landlord's property at significant risk; and
- the tenant has caused extraordinary damage to the rental unit.

The landlord's agent provided the following sworn and uncontested evidence in support of the landlord's 1 Month Notice:

- the tenant is living in bad conditions;
- all of the other tenants on the main floor have complained of a foul smell emanating from the rental unit into the hallway;
- problems with the smell have persisted for over one year;
- the landlord's agent inspected the unit on "a few occasions" and on inspection found:
 - piles of boxes and newspapers that the landlord's agent believed the tenant collected from the street;
 - no space to go inside because it was full of junk that the landlord's agent believed the tenant had acquired from others' garbage; and
 - extensive dirtiness;
- the landlord's agent arranged for a tradesperson to attend at the rental unit to do repairs to a blocked sink and that the tradesperson said he was unable to complete the repairs because of a strong smell in the unit;
- the sink remains blocked;
- on 30 July 2013, the landlord's agent sent a letter to a senior's advocacy group advising that the tenant needed assistance with cleaning;
- the tenant was provided with a copy of this letter;
- in response to the 30 July 2013 letter, the senior's advocacy group sent someone to assist the tenant with cleaning her apartment;
- the tenant refused to let the cleaner in to her apartment;
- the tenant has been provided with multiple warnings to clean her apartment and has not;
- the senior's advocacy group informed the landlord's agent that they would no longer be working with the tenant;
- the tenant will not speak to the landlord except to yell at her to go away.

The landlord's agent testified that when she entered the rental unit the carpets, drapes and a closet door were damaged, but that she had not yet replaced them. When asked to quantify the damage, the landlord's agent could not because no repairs had been undertaken. I alerted the landlord that her claim was likely premature. The landlord's agent asked to amend her claim to withdraw the portion of her claim that relates to damages.

Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Subparagraphs 47(1)(d)(ii) and (iii) of the Act permit a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where the tenant or person permitted on the property by the tenant has seriously jeopardized the health and safety of another occupant or the landlord and where the tenant or person permitted on the property by the tenant has put the landlord's property at significant risk. The landlord has set out both of these reasons in its 1 Month Notice.

The landlord's agent has provided uncontested written and sworn testimony that the conduct of the tenant has seriously jeopardized the health and safety of other occupants of the residential property as well as putting the landlord's property at significant risk. In particular, the excessive clutter in the rental unit poses a fire risk and the general untidiness creates a welcoming environment for pests. These both jeopardize the health and safety of the occupants of the building. The blocked sink, which the landlord is unable to repair because of the state of the rental unit, poses a potential flooding hazard and the fire hazard both lead me to conclude that the tenant is putting the landlord's property at significant risk.

The landlord's agent has provided the tenant with numerous warnings to clean her apartment and gone so far as to coordinate with the senior's advocacy group to assist the tenant to stay in the rental unit.

Furthermore, the 1 Month Notice states that the tenant had ten days, from the date of service of that notice, to apply for dispute resolution or the tenant would be presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice. The tenant did not apply to dispute the 1 Month Notice within ten days from the date of service.

For the reasons outlined above, I find that the 1 Month Notice is validly issued and will not consider the other reasons for cause set out by the landlord in the 1 Month Notice. As the tenancy has ended 31 October 2014, the landlord is entitled to an order of possession. Given the excessive personal belongings in the rental unit and its current state, I am issuing an order of possession for 1 pm on 30 November 2014. This will allow the tenant time to arrange for assistance to remove her extensive belongings and to return the rental unit to the landlord in the required state of repair.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The evidence provided by the landlord's agent indicates that it continues to hold the tenant's \$350.00 security deposit paid in June 2010. Over that period, no interest is payable.

Conclusion

The landlord is provided with a formal copy of an order of possession effective on 1 pm on 30 November 2014. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I order the landlord to recover the \$50.00 filing fee from the tenant by allowing the landlord to retain \$50.00 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from \$350.00 to \$300.00.

The landlord's application for damages is withdrawn.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 10, 2014

Residential Tenancy Branch

