



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROSE HOTELS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

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 section 55.

The tenant did not attend this hearing, although I waited until 1127 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent CL (the agent) provided testimony on behalf of the landlord.

The agent testified that he personally served the tenant with the dispute resolution package on 14 November 2014. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The agent testified that he served the tenant with the evidence before me on 8 December 2014 by posting it to the tenant's door. On the basis of this evidence and pursuant to sections 88 and 90 of the Act, I am satisfied that the tenant was served with evidence before me on 11 December 2014, the third day after their posting.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). The evidence is composed of nine pictures and a two page description of the pictures. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. In this case, the photographs are all of the tenant's belongings, the tenant's rental unit, and a portion of the residential property in which the tenant is storing more of his belongings. The tenant is aware of what these photographs show and was notified on 16 September 2014 of the landlords' intention to submit photographic evidence of the rental unit and

the tenant's possessions. Accordingly, I permit these photographs and their description into evidence as there is no prejudice to the tenant in doing so.

The agent testified that he personally served the tenant with the 1 Month Notice on 16 September 2014. The agent provided me with a proof of service document that set out the same. On the basis of this evidence, I am satisfied that the tenant was served with 1 Month Notice pursuant to section 88 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, and the testimony of the 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 it are set out below.

On 28 February 2014, the landlord took possession of the residential property in which the rental unit is contained. The landlord did not receive any paperwork from the previous owner in respect of any of the rental properties upon the completion of the sale. Through interviews with the residents of the building and records requested from the Province of British Columbia, the landlord's agents were able to piece together the rental history of the building.

The tenant has been a resident of the residential property for approximately ten years. The Province of British Columbia pays monthly rent of \$425.00 directly to the landlord on behalf of the tenant. The landlord continues to hold the tenant's security deposit of \$212.50. The tenant rents a rental unit that does not have its own toilet facilities. Shared facilities are available to the tenant.

On 16 September 2014, the landlord served the 1 Month Notice to the tenant. The 1 Month Notice set out an effective date of 31 October 2014. The landlord indicated that the 1 Month Notice was given for four reasons:

- the tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health safety or lawful right of another occupant or the landlord; and
 - put the landlord's property at significant risk;

- tenant has caused extraordinary damage to the unit/site or property/park; and
- tenant has not done required repairs of damage to the rental unit.

On 8 March 2014, the residential property was inspected by city officials. The fire department issued an order that the tenant's property be removed from the hallway and the rental unit as it was a fire hazard. The fire department also made orders with respect to the tenant's use of open flames within the residential property.

The agent testified that in mid-March 2014, the landlord moved the sole occupant of the neighbouring unit out of that unit (the neighbouring unit). This occupant had to be relocated because of severe water damage to the neighbouring unit.

The agent testified that at some point in or around April 2014, the tenant began storing items in the vacant neighbouring unit. The tenant used the neighbouring unit for storage of his personal possessions, some of which had previously been stored in the hallway. The agent testified that the tenant does not have a tenancy agreement governing the neighbouring unit. The agent testified that the tenant does not have keys to the neighbouring unit. The agent testified that the tenant is gaining entry to the neighbouring unit through a broken door.

The agent testified that the tenant's occupation of the neighbouring unit is preventing the landlord from making necessary repairs to the neighbouring unit.

On 11 September 2014, a property use inspector issued a notice of violations that included clutter belonging to the tenant.

On 16 September 2014, the agent observed a strong smell of urine and feces from the rental unit. The agent discovered that the tenant had been urinating and defecating in the sink in the rental unit.

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. Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The landlord has set out in his 1 Month Notice, among other reasons, that the tenant

seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The agent has provided uncontested and sworn testimony that the conduct of the tenant has seriously jeopardized the health safety or a lawful right or interest of the landlord or another occupant. 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 reason for cause set out by the landlord in the 1 Month Notice.

As the Province of British Columbia has paid the tenant's December rent, I find that the tenant is entitled occupy the rental unit until the end of the month. I find that the direct payments do not constitute a reinstatement of the tenancy. The landlord is granted an order of possession for one o'clock in the afternoon on 31 December 2014.

The landlord has asked for an order of possession in relation to both the rental unit and the neighbouring unit. My authority to make an order of possession is governed by subsection 55(2). That subsection provides that a landlord may request an order of possession of a rental unit. Thus, I cannot issue an order of possession for the neighbouring unit as it is not the tenant's rental unit, that is, the tenant has no legal right to occupy the neighbouring unit under the tenancy agreement.

Pursuant to subsection 62(2) of the Act, I may make any finding of fact or law that is necessary or incidental to the making of decision or order under the Act. While I am unable to issue an order of possession to the landlord in respect of the neighbouring unit, I am able to make a finding that the tenancy agreement does not permit the tenant to occupy the neighbouring unit as it is a finding in law that is incidental to the making of this decision. Thus, I find that the tenant does not have a legal right under the tenancy agreement to occupy the neighbouring unit.

Conclusion

The landlord is provided with a formal copy of an order of possession effective at one o'clock in the afternoon on 31 December 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.

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: December 18, 2014

Residential Tenancy Branch

