



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nechako View Senior Citizens Home Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for recovery of the filing fee paid for this application.

The tenant, his advocate, the landlord's agent/listed respondent, and other landlord representatives/board members attended and the hearing process was explained.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

At the outset of the hearing, the landlord confirmed receiving the tenant's evidence and confirmed that they had not provided documentary evidence themselves.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

The tenant submitted that he moved into this rental unit about 9 years ago and that his current monthly rent is \$490, due on the first day of the month.

The landlord's agent explained that the landlord is a non-profit agency, that the rental unit is located in a 36 unit seniors' complex, and that local citizens purchased a building

some time ago in order to renovate the building to provide affordable housing for seniors in the area. The landlord (hereafter "landlord") submitted further that the seniors' complex is run by a volunteer board.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated January 2, 2015, was personally served to the tenant on that date, listing an effective end of tenancy of February 15, 2015. A notice to end the tenancy is not effective earlier than one clear calendar month before the next rent payment is due. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to February 28, 2015.

The causes listed on the Notice alleged that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk, has engaged in illegal activity that has or is likely to damage the landlord's property, has caused extraordinary damage to the rental unit, and has not done required repairs of damage to the rental unit.

The landlord confirmed that there has been no illegal activity alleged against the landlord and misread this cause listed on the Notice.

In support of their Notice, the landlord submitted the following:

- Earlier in the year (2014), the tenant informed the landlord he had trapped 23 mice in the rental unit.
- The tenant lives in filth and had items lying on the floor.
- Earlier in the year (January 2014), the tenant reported an ant infestation in the rental unit earlier in the year.
- The landlord did not act to evict the tenant last year as the tenant promised to clean the rental unit.
- That in December 2014, the tenant broke the door frame when he forced open his front door, and when presented with a contractor's bill for repair, threw the bill in the landlord's face.
- That the tenant's door was latched when he broke the front door.

Tenant's response-

- That he is a clean person and denied the landlord's allegation that he lived in filth.

- That each time the landlord mentioned an issue, such as the freezer, he complied with their request.
- That due to the lack of upkeep and “shoddy” workmanship in the building, his front door was frozen shut consistently and he was unable to get out of his rental unit.
- That he had to get assistance at least 4 times in order to get his door open, and that being trapped in his rental unit was a potentially lethal situation for anyone, but especially someone of his age. The tenant denied having the door latched when it was broken and that he had the door frame repaired.
- That his documentary evidence from the contractor repairing the door shows that the door was out of alignment and that the mold and moisture build up was due to a leaky window.

Analysis

Where a Notice to End Tenancy is disputed, the landlord had the burden to prove that the tenancy should end for the reasons indicated on the Notice.

In this case, I find the landlord submitted insufficient evidence to prove that the tenant caused any extraordinary damage to the rental unit or put the property at significant risk. The matter of the front door, which the landlord said was the “final straw,” appeared to be a structural issue, as noted in the contractor’s statement. I do not find that the tenant is responsible for structural issues, and the landlord is obligated under the Act to repair and maintain the rental unit that complies with the health, safety and housing standards required by law. The tenant’s evidence shows that the frozen door was a safety issue and concern for the tenant, as it prevented easy ingress and egress to the rental unit. I also do not find the landlord submitted sufficient evidence to show that the tenant was responsible to make these repairs.

I do not find that the landlord submitted any evidence that the tenant jeopardized the health or safety or lawful right of another occupant or the landlord.

Due to the above, I find the landlord has not submitted sufficient evidence to support their Notice. As a result, I find that the landlord’s 1 Month Notice to End Tenancy for Cause, dated and issued January 2, 2015, is not valid and not supported by the evidence, and therefore has no force and effect. **I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

I award the tenant recovery of his filing fee of \$50. The tenant may deduct this amount from his next or a future month’s rental payment in satisfaction of his monetary award, notifying the landlord when he is making such deduction.

In the alternative, I grant the tenant a monetary order for \$50, if he is unable to make that deduction from a monthly rent payment. The monetary order is enclosed with the tenant's Decision.

Conclusion

The tenant's application seeking cancellation of the Notice is granted as I have cancelled the Notice. The tenant is awarded recovery of his filing fee of \$50.

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: January 30, 2015

Residential Tenancy Branch

