



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Grace Delicatessen and Restaurant Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The tenant, an advocate for the tenant and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I informed the parties that I was aware of a decision dated February 3, 2015, in which a notice to end tenancy for cause issued on January 1, 2015 was cancelled. That notice to end tenancy contained the same three reasons for ending the tenancy as the notice to end tenancy that was subject of this hearing. I informed the parties that I would therefore only consider incidents occurring between January 2, 2015 and March 26, 2015, the date that the second notice was issued.

Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy dated March 26, 2015 valid?
If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began in 1987. The rental unit is an apartment in a multi-unit building.

On March 26, 2015 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated the same three causes for ending the tenancy as were set out in the notice issued January 1, 2015:

1. the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
2. the tenant put the landlord's property at significant risk; and
3. the tenant has caused extraordinary damage to the rental unit.

Landlord's Evidence

The landlord stated that on March 2, 2015 a commercial tenant contacted the landlord about water leaking into their office. The landlord stated that he immediately went to the tenant's suite, and the tenant told the landlord that he had been filling the bath to wash an inflatable bed, and water spilled over on the bathroom floor. The landlord stated that he inspected the overflow drain in the tub and there was nothing wrong with it. The landlord submitted a letter written by the commercial tenant, who indicated that there had been leakage into his office from the upstairs suite on several occasions. The landlord stated that part of the commercial tenant's office is located directly below the tenant's bathroom.

The landlord stated that when he attended the tenant's unit on March 2, 2015 he saw that the unit was dirty and cluttered with garbage and junk. The landlord also saw cigarette packs, matches and cigarette butts on the floor. The landlord submitted photographs that show personal items, plastic bags, paper waste and other garbage throughout the unit. The landlord submitted that the tenant's lack of care of his unit has been an ongoing problem that keeps cycling around, and this time it was only one and a half months after the unit had been cleaned up. The landlord stated that the tenant is definitely smoking in the unit and his behaviour poses a serious risk to the building and its occupants.

In the hearing the landlord orally requested an order of possession.

Tenant's Response

The tenant stated that on March 2, 2015 he was filling his bathtub, and he fell asleep. He was awoken by the landlord's arrival, and at that time the water had not risen above the overflow drain and there was no water on the floor.

The tenant stated that he has been making continued efforts to clean up his unit, so things may have been scattered on the floor while he was sorting through and reorganizing his possessions. The tenant acknowledged that there was “newsprint and grimy materials” on the floor. The tenant stated that he is trying to quit smoking and he only smokes on the balcony. The tenant stated that he then carries the butts back inside, and he may have spilled some butts on the floor.

Analysis

I find that the notice to end tenancy is valid.

I accept the landlord’s evidence as more consistent and credible than that of the tenant. There was water leaking into the commercial tenant’s office on March 2, 2015 and on that date the tenant was filling his bathtub. The tenant acknowledged filling the tub on that date, and I find it very likely that the tenant did splash water over the edge of the tub and cause the leak.

The landlord’s photographs show significant clutter in the rental unit on March 2, 2015. Some of that clutter consists of plastic and paper waste, and there are clearly cigarette packages and matches on the floor amongst the garbage. Whether the tenant was smoking inside the unit or merely accidentally spilled some butts while bringing them inside, the presence of cigarette butts and matches amongst the garbage clearly pose a fire risk.

I therefore find that on March 2, 2015 the tenant put the landlord’s property at significant risk and seriously jeopardized the health or safety of other occupants in the building.

The landlord orally requested an order of possession in the hearing, and accordingly I grant the landlord an order of possession.

Conclusion

The tenant’s application is dismissed.

I grant the landlord an order of possession effective May 31, 2015. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: May 15, 2015

