



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, MNR, FF
Tenant: CNC, MNDC, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the either the landlords or the tenant's claim for monetary orders regarding the payment of propane costs. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The monetary claims are unrelated in that the basis for them rest largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the landlord's monetary claim and the tenant's monetary claim. I grant both the landlord and the tenant leave to re-apply for their respective monetary claims.

During the hearing the landlord confirmed that she had received evidence from the tenant, however, I noted that no evidence was in either the tenant's file or the landlord's file. The tenant submitted that she mailed her evidence to the Residential Tenancy Branch because the Service BC office said they didn't have an internal mail system.

I ordered the hearing could continue because the landlord had the tenant's evidence and I would accept the tenant's evidence if she provided it no later than the following day to the local Service BC office. After the hearing was concluded the evidence was

found, it had been delivered to a different Service BC office who re-routed it back to the Residential Tenancy Branch office, that had not moved.

During the hearing the tenant provided testimony that she had obtained employment, an issue that has some relevance to the outcome of this decision. I ordered the tenant to provide to the landlord and to me no later than the end of business on Friday, July 17, 2015 confirmation from her employer that she had obtained employment. I ordered this confirmation required something identifying her employer, such as a statement on a letterhead or a paystub that clearly identified the employer.

I ordered the landlord could provide any response she wanted to this additional evidence. I also ordered the landlord to provide written confirmation that she either received or did not receive the additional evidence. I ordered the landlord had until the end of business on Monday, July 20, 2015 to submit these responses.

The tenant did not submit a confirmation of employed as per my order and the landlord provided a declaration that she had not received a confirmation of employment from the tenant.

At the time of the writing of this decision, I had received no other documentation from either party.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

The landlord has submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on September 17, 2013 for a month to month tenancy beginning on October 1, 2013 for the monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on May 19, 2015 with an effective vacancy date of June 30, 2015 citing the tenant has put the landlord's property at significant risk and the tenant has not done required repairs of damage to the unit.

The parties agree that the tenant is owner of a custom powder and ceramic coatings business. The tenant submits that, with the knowledge of the landlord, she has been cleaning metals in the garage of the rental unit and once cleaned she takes them to another location to complete the coatings and finishes.

The landlord submits that when she completed an inspection of the property she found that everything in the garage was covered in a black dust or powder. She states that there were 15 bags of garbage in a back shed and the yard was unkempt.

The landlord submitted into evidence a copy of a letter dated May 12, 2015 from the landlord to the tenant providing written notice to the tenant to: stop all activity related to her custom coating business; remove all of her equipment from the property; and "that the cost of cleaning up the mess and residue your business has left in our house including our vents and heating ducts is at your cost and to be professionally done"; remove all unsanitary garbage and debris from inside the back shed. The letter advised the tenant she had until Monday, May 18, 2015 to complete the work.

The landlord confirmed in her written submission that upon a follow up inspection on May 19, 2015 the tenant had cleaned the garage but that the equipment was still there as was the garbage. The landlord submitted that the smell in the garage, back shed and house was disgusting. The landlord provided that the tenant stated she had had someone look at the vents but that they did not require cleaning but no invoice was provided.

The landlord submits that the residential property is located in an area that is zoned as residential not commercial. The landlord has provided relevant zoning bylaws to confirm the residential zoning. The landlord also testified that 2 days prior to the hearing her insurance broker advised her that her insurance on the property is voided if a business is run on the property.

I note the landlord has provided no photographic evidence of the condition of the garage; shed; house or yard or any confirmation from a certified professional that there is anything out of the ordinary in the vents or duct work in the house or garage.

The landlord issued the tenant a 1 Month Notice to End Tenancy for Cause on May 19, 2015 with an effective vacancy date of June 30, 2015 citing the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk and the tenant has not done required repairs of damage to the unit.

The tenant submitted that she has shut down the operation of her business, she has closed down all internet and social media sites related to her business and has advertised, for sale, all of her equipment save for one that was a present from her father. She states she has obtained employment to replace her source of income.

She states she has since removed the garbage bags. She stated that because May 18, 2015 was a statutory holiday she was not able to remove the garbage until the following day.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk; or
- b) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

Based on the evidence and testimony of both parties, I find that the work requested of the landlord to have the tenant remove the garbage and clean the vents are not, in fact, repairs but rather cleaning. Even if I were to consider this work as repairs, I find the landlord has failed to provide sufficient evidence to establish that failure to complete this work constitutes a **significant** risk to the landlord's property.

I find the requirement of the landlord to have the tenant remove her equipment interferes with the tenant's right to exclusive use of the property for lawful purposes such as storage and as such, I find the landlord cannot rely on this as a ground to end the tenancy. Further, in the absence of any evidence to the contrary, I accept the tenant has closed down her business and is no longer conducting business out of the residential property.

While the landlord has recently found out that her insurance would be voided if a business is run out of the residential property, I find that this information was not known to the landlord at the time the 1 Month Notice was issued.

I do consider that when a landlord's insurance on their property is voided as a result of the tenant's activity the landlord's property is put at risk and that that risk is significant. However, as this information was not known to the landlord at the time the Notice was issued I find the landlord cannot rely on this as a ground to end the tenancy.

Therefore, I find the landlord has failed to establish sufficient grounds to end the tenancy. I do however, caution the tenant that should the tenant continue to or re-open her business out of the residential property and the landlord's insurance is cancelled the landlord might consider issuing a new notice to end tenancy on the grounds of putting the landlord's property at significant risk.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution and order that the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application.

I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72 of the *Act*.

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: July 21, 2015

Residential Tenancy Branch

