



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, OLC

Introduction

This hearing was convened as a result of a Tenants' application for dispute resolution wherein they sought an Order pursuant to section 66(1) for more time to make an application to cancel a 1 Month Notice to End Tenancy for Cause issued and personally served on May 26, 2015 (the "Notice"), an Order canceling the Notice, and an Order pursuant to section 62(3) that the Landlord comply with the *Act*, Regulations or Tenancy Agreement.

Although the Tenant was late calling in, both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a Tenant has applied to cancel a Notice for cause *Residential Tenancy Branch Rules of Procedure* require the Landlord to provide their evidence submission first, as the Landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. The Landlord stated that they did not receive the Tenants' evidence which was submitted on July 9, 2015. I confirmed and reviewed the contents of the Tenants' submissions with the Landlord and the Landlord confirmed they were not seeking an adjournment and were prepared to have the Tenants' July 9, 2015 submissions considered. The evidence submitted by the Tenants on that date included:

1. A copy of the Tenants' Application for Dispute Resolution;
2. the Notice;
3. a 48 hour Notice of Entry indicating the Landlord's intention to inspect the balconies of the rental unit as well as three other units in the rental building;
4. a Right of Entry dated May 21, 2015 wherein the Landlord informed the Tenants of the Landlord's intention to inspect the rental unit on May 22, 2015 at 4:00 p.m.;
5. a copy of the Move In Condition Inspection Report;
6. a copy of the Residential Tenancy Agreement;
7. a handwritten note from the Tenants regarding the suite inspection; and

8. a handwritten note dated June 5, 2015 wherein the Tenants confirm they have two cats, that the kittens had been adopted out to new owners and wherein they claim the balcony was cleaned up on May 30, 2015.

Aside from the above, neither party raised any issues with respect to the evidence before me. I refer only to the relevant facts and issues in this decision.

At the outset of the hearing, the Landlord confirmed that should the Tenant's application be unsuccessful, they sought an Order of Possession pursuant to section 55 of the *Act*.

As the Tenants made their application within the ten days prescribed in section 47, their application for more time to make an application to cancel the Notice was not required.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order that the Landlord comply with the *Act*, Regulation, or Tenancy Agreement?

Background and Evidence

The tenancy began on November, 1, 2012. Rent in the amount of \$800.00 was payable on the first of each month.

Although the tenancy agreement was not in evidence, the Landlord stated that at the time of the tenancy beginning a copy of the tenancy agreement was provided to the Tenants as well as a copy of the "Strata Bylaws (Form K)". The Tenants did not take issue with this.

On May 22, 2015 the Landlord performed a suite inspection. Introduced in evidence was a letter from the Landlord, dated May 25, 2015 wherein the Landlord details the results of the suite inspection and which attaches the Notice. The Landlord writes as follows:

- The carpets are heavily stained and degraded and appear not to be regularly vacuumed and cleaned;
- Three adult cats, and two kittens are in the rental unit without prior authorization or payment of a pet deposit;
- \$400.00 in strata bylaw infraction fines remain outstanding and relating to 30 bylaw infractions;

- Despite the numerous letters and warnings, the Tenants continue to use their deck to store items contrary to the strata bylaws;

As noted, attached to the May 25, 2015 letter was the Notice.

The Landlord testified that the Notice was served on the Tenant, S.B., on May 26, 2015. Introduced in evidence was a letter from the Landlord, dated June 9, 2015 wherein she provides details as to the service of the Notice. Also introduced in evidence was a copy of the Proof of Service of the Notice signed by both the Landlord's representative, E.S. and P.D., the person witnessing service.

The reason stated in the Notice was that the Tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- put the Landlord's property at significant risk; and
- caused extraordinary damage to the rental unit.

Introduced in evidence were approximately 32 letters from the Landlord to the Tenant regarding violations of the Strata bylaws dating from June 3, 2013 to May 2015 and which related to the following:

- numerous noise complaints;
- complaints relating to marijuana and tobacco smoke;
- numerous complaints about the Tenants or their guests propping the emergency exit doors open;
- a complaint about the Tenants' guests banging on the rental unit door, shouting and using profanity laced language and verbally abusing another property owner;
- a visitor of the Tenants bringing a dog within the strata plan contrary to the strata bylaws; and
- the Tenants' improper storage on items on their balcony.

Also introduced in evidence was a letter dated September 30, 2014 from the Landlord to the Tenant wherein the Landlord provided the Tenants with further copies of the letters dated from September 26, 2014 to September 30, 2014 and which listed the bylaw infractions alleged to be committed by the Tenants or persons associated with the rental unit. In this letter the Landlord writes that failing a reply from the Tenants, the Landlord would proceed with "terminating [their] tenancy".

The Landlord testified that at no time did the Tenants provide a written reply to the letters informing them of the alleged bylaw infractions and inviting their response.

Despite the September 30, 2015 strongly worded warning letter, the Tenants received a further eight warning letters from September 30, 2014 to December 31, 2014 as well as two more warning letters dated February 11, 2015 and May 7, 2015.

Also introduced were photos of the rental unit showing the damage to the rental unit as detailed in the May 25, 2015 letter including heavy staining on the carpet, graffiti and writing on the walls in both ink and spray paint, missing door trim, a missing bathroom cabinet door, damage to the walls, and a balcony full of bike parts, cardboard, furniture, and other miscellaneous items. The Landlord noted that the photo of the deck was taken after the Tenants had been informed of two fines levied by the strata for the Tenants' items improperly stored on the deck.

The Landlord also confirmed that two further fines had been levied against the Tenants in June: one on June 2, 2015 for a noise violation; and, one on June 24, alleging the Tenants guests broke into a car in the building parkade.

The Tenant testified that his biggest concern was that the Landlord's inspection was done contrary to the *Act*. He stated that had he knew the Landlord was coming to inspect the unit, rather than the balcony, he would have cleaned up the rental unit. He also noted that the Condition Inspection Report noted that the carpet was stained at the outset of the tenancy. Finally, he stated that the Landlord told him that he would have a chance to fix the rental unit.

In response to the Landlord's submissions regarding the strata bylaw infractions and letters sent to him, he stated that he did not receive 32 letters rather he believed that he received 15-20 letters. He confirmed that most of the complaints related to noise. He also stated that he responded to the letters, and apologized for his behaviour and the behaviour of his guests. When I asked if he had provided a written response and if he had such evidence, he stated that he did not.

The Tenant stated that a year prior they received another Notice to End Tenancy, that they had gone to arbitration and that the decision was in their favour. I confirmed with the parties that I would review that decision.

The Tenant further stated that the noise complaints related to other occupants of the rental building. Further, he stated that the person who allegedly broke into a car in the parkade was not known to him.

Analysis

After considering all of the written and oral submissions submitted at this hearing, I find that the Landlord has provided sufficient evidence to show that the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord

I accept the Landlord's evidence that the Tenant has received 32 written complaints regarding strata bylaw infractions. The Tenant conceded that he has been warned by the Landlord on at least 20 occasions.

In this case, the reason the Notice was issued was the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find the Tenant was provided sufficient warnings by the Landlord's agent to correct this behaviour. Whether I accept the Landlord's evidence or the Tenant's, the he has been warned on at least 20 occasions. Despite these warnings, I find that the Tenants continued to unreasonably disturb the other occupants in the rental building with including a noise complaint on June 2, 2015 which is notably after the Notice was issued.

Therefore, I dismiss the Tenant's application to cancel the Notice.

As the tenancy is ending, the Tenant's Application for an Order that the Landlord comply with the Act, Regulation or Tenancy Agreement is unnecessary and is also dismissed.

As I have found the Notice should be upheld on the ground that the Tenants have unreasonably disturbed other occupants in the rental building, I need not consider the other reasons cited in the Notice. While the photos of the rental unit indicate the rental unit was not clean on the date of the inspection, the Tenants have until the end of the tenancy to clean and make necessary repairs. The Tenants are cautioned to ensure they follow the *Residential Tenancy Branch Policy Guidelines*, 1. Landlord & Tenant – Responsibility for Residential Premises when cleaning the rental unit at the end of the tenancy to avoid, or minimize any monetary claim by the Landlord.

As the Tenants' application is dismissed and the Landlord has made an oral request for an Order of Possession, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act provides as follows:

55 (1) If a Tenant makes an application for dispute resolution to dispute a Landlord's notice to end a tenancy, the director must grant an Order of Possession of the rental unit to the Landlord if, at the time scheduled for the hearing,

- (a) the Landlord makes an oral request for an Order of Possession, and

(b) the director dismisses the Tenant's application or upholds the Landlord's notice.

As I have dismissed the Tenants' application, I find that the Landlord is entitled to an Order of Possession effective **2 days after service**. This Order must be served by the Landlord on the Tenant and may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenants' application to cancel the Notice is dismissed. As the tenancy is ending, the Tenant's Application for an Order that the Landlord comply with the Act, Regulation or Tenancy Agreement is also dismissed.

The Landlord is granted an Order of Possession.

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 30, 2015

Residential Tenancy Branch

