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The Advocate testified that the Tenant has significant medical issues and was hospitalized in June 2015. In evidence the Tenant has provided medical notes and a letter indicating the Tenant has serious medical issues and is under the respective physician's care. The Advocate is also mentioned as having medical issues in a note from a doctor.

The Advocate testified that the Tenant was two days late in filing in his Application due to his medical condition.

I found that the Tenant's medical evidence indicated an exceptional circumstance that prevented him from filing his Application on time, and I allowed the Application to proceed.

In accordance with the Rules of Procedure, the Landlord went first to explain why the Notice had been issued to the Tenant. The Agents for the Landlord first had the Witness provide his testimony.

The Witness explained he was a former RCMP officer for 26 years, a transit policeman for 15 years, and had been working for the past 8 years as an independent inspector for rental units. The Witness testified he had a contract with the Landlord to inspect the subject rental unit.

The Witness testified that he was hired by the Landlord to inspect the rental unit due to hoarding issues with the Tenant and the Landlord was concerned about the safety of the rental unit for the Tenant and the potential for harm to other occupants in the building. He also testified there had been some issues between the Tenant and the Agent for the Landlord, J.M.

The Witness testified he was hired in February of 2015 to do an inspection of the subject rental unit on February 26, 2015. When he attended the rental unit he was refused entry by the Advocate for the Tenant.

The Witness testified he was informed by the Agent for the Landlord that a notice of entry had been properly given. The Witness testified that the Advocate for the Tenant informed him she was not ready for the inspection and would not let him in. The Advocate stated she would call the Witness the following day to arrange a time to inspect the rental unit.

About a week later the Advocate contacted the Witness. According to the Witness they had a one hour conversation. The Witness explained that the Advocate told him that she and the Tenant had health issues. The Witness testified that the Advocate was very evasive as to when she would let the Witness inspect the rental unit.

The Witness testified that the two Agents for the Landlord gave the Tenant another notice to inspect the rental unit on March 5, 2015. The Witness testified that they had difficulty opening the door because there was a wire shopping basket holding the door closed. Immediately after entering the rental unit he noticed there were large amounts of fruit flies and house flies everywhere in the rental unit, and there was a strong smell.

The Witness testified that there were bags and other items in the hallway. He testified that there were two egress points from the kitchen, one of which was blocked off completely by boxes and other items. He testified that the kitchen was covered by food dishes and food containers piled up everywhere, although he could see the stove was clear.

He made his way into the living room through a narrow passage between the boxes and bags found the Tenant lying on the couch covered by a blanket. He testified that the living room was piled up quite high with boxes and he could not see the baseboard heaters in the rental unit.

The Witness testified that he viewed the second bedroom and it was full from floor to ceiling with items.

The Witness testified that he viewed the master bedroom and there was a limited path to the bed amongst the boxes and bags.

He was able to walk on small paths between the items and went into the bathroom. The bathtub was not usable as it had items stored in it, about four or five feet in height. There were items right up to the wall.

The Witness testified there was a very pungent smell and a lot of flies in the rental unit. He testified that he was very concerned about how any emergency services could access the rental unit to help the Tenant if need be.

The Witness testified he had a conversation with the Tenant and the Tenant informed him he had recently suffered a stroke. The Witness testified that the Tenant told him that it was his goal in life to have J.M., an Agent for the Landlord, fired and used a derogatory term when referring to this Agent. The Tenant apparently informed the Witness that he would like to see J.M., "... go back to his own country."

The Witness testified the Tenant informed him that he had seen rats and mice in the building, but the Agent for the Landlord would do nothing about it.

The Witness was concerned about the state of the rental unit. At one point he testified that it was in the worst condition he had ever seen in a rental unit in his experience as an inspector. He testified that he contacted the RCMP and they attended the rental unit with a mental health nurse, although he did not have information on the outcome of that visit due to privacy laws.

The Witness also contacted the Public Trustee, who apparently manages the finances of the Tenant but has no involvement in his health issues.

The Witness also contacted the local Health Authority and they informed him they would investigate.

The Witness testified he was to inspect the rental unit once again on April 30, 2015, and when he attended the rental unit there was a note on the door giving alternate dates. He testified that the Agents for the Landlord had given the Tenant notice they would be entering. One of the Agents attempted to open the rental unit door but it was blocked again. They tried several times and then they heard a click of the door lock from inside and they were able to enter. Again the Tenant was inside lying on the couch.

A shopping cart was pushed up against the door and they had difficulty opening the door. The Witness talked to the Tenant and he appeared weak and frail, with his hands still shaking.

The Witness testified that the rental unit was in the same condition and actually worse. The odour was so strong that one of the Agents for the Landlord, K.T., had to leave the room as the odour made her sick to her stomach.

The Witness testified that he was still not able to view the baseboard heaters and that there was a 12 to 18 inch pathway amongst the boxes and bags, and the egress from the kitchen was still blocked off. The Witness testified that the bathtub was now full to the ceiling with items.

The Witness also noticed that the Tenant could not access the laundry room as they could not get in the door.

The Witness testified that he did not think emergency services would be able to enter the rental unit if the Tenant required help. According to the Witness, the Tenant told him he was not happy with his living conditions but his spouse, the Advocate appearing for the Tenant, was the problem as she keeps bringing in items to the rental unit. According to the Witness the Tenant informed him that she had this problem for years.

The Witness testified that the fire department had tried to inspect the rental unit but the Tenant would not allow them in. According to the Witness, the fire department left information for the Tenant informing him of his duties to comply with health and safety regulations. For example, there is one meter of egress required to all rooms in this municipality. Furthermore, the smoke alarms had to be updated.

The Witness attended with the fire department inspector and an Agent for the Landlord, for a further inspection of the rental unit on May 12, 2015. The Witness testified that the fire department representative inspected the smoke detector and found it was not working, that there was still no one meter path, and that there was a serious fire load in the premises.

According to the Witness the Tenant informed them they did something to the smoke detector because it kept going off in the middle of the night. The Witness testified that the fire department inspector informed him that due to the large amount of flies in the rental unit they may be drawn into a smoke detector and they may be setting off the smoke alarm.

In cross examination, the Advocate for the Tenant asked the Witness if he was present when they inspected the smoke alarm. The Witness testified that he was and the Tenant had informed him the smoke alarm goes off in the night so they disabled it.

The Advocate for the Tenant had no further questions for the Witness and he was excused.

The Agent for the Landlord, K.T., then testified that the tenancy began in 2007 and that the Tenant initially informed the Landlord he was having health problems and would be well attended to by his family. The Agent testified that he was initially well taken care of by his family, but in 2012 they began having problems with the spouse of the Tenant. The Agent testified the Tenant and his spouse began to store things they found on the street in the rental unit. There was a fire department inspection in 2013, and according to the testimony of the Agent, the fire department inspector became violently ill immediately following the inspection, ostensibly due to the odour.

The Agent explained they went to arbitration at the branch and came to an agreement that the Tenant would remove 20 boxes per month over the next few months. Following this, the amount of boxes in the rental unit actually began to increase and did not decrease. There was a second arbitration where the Landlord was not successful in supporting a second notice to end tenancy, as the cause alleged was the Tenant had breached the terms of an agreement with the Landlord.

The Agent testified that the Tenant is very quiet and there are no other problems. However, in early 2015 the Agents became very concerned because a fire and safety inspector found the smoke alarm was being tampered with in the rental unit. According to the Agent, the Tenant and his spouse continue to bring items into the rental unit and have recently began removing items from the organics bin.

The Agent explained that on July 3 their fire and safety contractor checked the fire alarm and noted on the invoice that the rental unit is a fire hazard.

The Agent further testified that the reason they hired the Witness as an independent inspector, and used an independent fire and safety inspector, is that the Tenant and his spouse have a great deal of animosity toward the Landlord's other Agent, J.M.

The Agent testified that their concern is that the Tenant will continue to tamper with the smoke detector in the rental unit.

In reply, the Advocate for the Tenant testified that the Tenant and she had suffered their illnesses due to the conduct of the Agent for the Landlord, J.M.

The Advocate testified that J.M. will not let her live with the Tenant and this prevents her from helping the Tenant remove the items in the rental unit. She testified that the Agent has entered the rental unit without her permission, although she had difficulty recalling specific times and dates. There was no evidence the Tenant or his spouse, the Advocate here, had ever complained to the Landlord in writing about this.

The Advocate also testified that the rental unit has passed every fire inspection made of it. She testified that there are no flies in the rental unit and that she has been cleaning out the rental unit, but alleged that J.M. has prevented her from cleaning out the rental unit and has blocked her attempts to remove items from the rental unit. She testified there are a few fruit flies from the empty bottles they collect.

The Advocate denied they had tampered with the smoke detector in the rental unit.

In evidence the Tenant had supplied letters from two neighbours who write they pass the rental unit door every day and have not smelled anything coming from the rental unit. The Advocate denied she had removed items from the organics bin. She alleged that the Landlord's Agent, J.M., had yelled at her for putting items in the organics bin. She testified that J.M. had told her to open windows in the rental unit to remove the smell. The Advocate testified that the smell in the rental unit was just stale air.

The Advocate also denied there was anything stacked from the floor to the ceiling in the rental unit.

The Tenant had supplied pictures in evidence regarding the condition of the rental unit, although the Advocate could only testify the pictures had been taken sometime in July. The pictures provided show only limited views of the rental unit.

The Advocate explained the Tenant used to have a vehicle but it was taken away from him and this makes it difficult to remove items from the rental unit.

The Advocate denied anyone had tampered with the smoke detector. She testified that they had always past each fire inspection.

The Advocate testified that nothing was stored around the baseboard heaters in the rental unit. She testified there were still a few pop cans in the rental unit but these could be removed. She testified there were a few items still stored in the bathtub.

I note that during her testimony the Advocate had several complaints about the Agent for the Landlord, J.M., such as they had difficulty with doing laundry at the rental unit. I explained to the Advocate that these complaints were not related to the issues that were before me, arising from the Notice. I explained to the Advocate that the Tenant's Application had simply requested a cancellation of the Notice and had nothing to do with their complaints about this particular Agent.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant's Application to cancel the Notice must be dismissed.

I find the Landlord has proven that the Tenant, or a person allowed on the property by the Tenant, has put the Landlord's property at significant risk and has seriously jeopardized the health or safety of other occupants, and has seriously jeopardized the lawful right or interest of the Landlord, for the following reasons.

I find that the Tenant, or a person allowed on the property by the Tenant, has tampered with the smoke detector in the rental unit. I base this on the testimony of the Witness. I accept the testimony of the Witness over that of the Advocate for the Tenant on this point and several other points, as I found the Witness' testimony to be straight forward and unequivocal. I found the Witness was an independent third party who had no personal interest in the situation, such as the Advocate for the Tenant would have. The Witness' testimony had the ring of truth to it, and although he was not unsympathetic to the health concerns of the Tenant, he described a very serious situation that could potentially cause harm to other occupants in the building and has put the property of the Landlord at significant risk, should a fire occur in the rental unit.

It was clear that the Advocate for the Tenant had a personal interest in the outcome of the dispute and she was testifying and providing evidence for her own benefit, not just that of the Tenant and was not simply advocating the position of the Tenant.

I also find the Tenant has breached section 32 of the Act by failing to maintain reasonable health, cleanliness and sanitary standards in the rental unit. I find that the Tenant and his spouse are hoarding items in the rental unit and some of the stored items and the observed condition of the rental unit indicate the Tenant is not maintaining the rental unit in a reasonably healthy and sanitary manner. While I accept the rental unit may have improved over the past while since this latest Notice was issued, it appears to me that the Tenant has a pattern of hoarding and then ignoring or neglecting the cleanliness of the rental unit until forced to do so by the Landlord. Section 32 of the Act requires the Tenant to conduct ongoing cleaning to maintain the cleanliness and sanitary condition of the rental unit, not just in the days following the inspection of the rental unit by the Landlord or their Agents, and not just in an attempt to cancel another Notice to End Tenancy issued by the Landlord.

I find the above instances of misconduct by the Tenant, or a person allowed on the property by the Tenant, are sufficient to prove the Landlord's Notice that the Tenant, or a person allowed on the property by the Tenant, has put the health and safety of other occupants at the property at serious risk. I find that

the tampering with a smoke alarm in the rental unit would prevent a fire from being detected at an early stage and potentially this could cause serious harm to other occupants. By blocking access into the rental unit and having limited access to the areas in the rental unit, I find the Tenant, or a person allowed on the property by the Tenant, has put the Landlord's property at significant risk, in the event that a fire in the rental unit should occur. I find that due to the condition of the rental unit it would be extremely difficult for emergency responders to deal with a situation requiring their attendance at the rental unit, whether it be for a fire or a medical incident.

For these reasons, I found that the Notice should not be cancelled and that the Application of the Tenant should be dismissed.

Following my dismissal of the Tenant's Application and my finding that the Notice to End Tenancy was valid the Agent for the Landlord requested an order of possession. Pursuant to section 55 of the Act, the Landlord may request an order of possession in these circumstances.

The Agent for the Landlord agreed that the order of possession should be dated for September 30, 2015, as this would give the Tenant nearly eight weeks to vacate the rental unit.

Therefore, I grant the Landlord an order of possession **effective at 1:00 p.m. September 30, 2015.**

Conclusion

The Landlord's Notice to End Tenancy for cause was found to be valid. The Tenant, or a person allowed on the property by the Tenant, is hoarding items and has tampered with the smoke detector in the rental unit, creating a situation which jeopardizes the health and safety of other occupants in the building and putting the Landlord's property at significant risk.

The Application of the Tenant is dismissed and the Landlord is granted an order of possession effective at 1:00 p.m. on September 30, 2015, pursuant to section 55 of the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 11, 2015

Residential Tenancy Branch

