



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNLC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy issued for the landlord's intention to convert the manufactured home park to another use and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord was represented by an agent (hereafter referred to as the landlord) who advised that the landlord is a company, and he appears as agent for that company, and the landlord named in the notice to end the tenancy is the name of the rental complex. The style of cause has therefore been amended to show the name of the landlord as the landlord that issued the notice.

The tenant also attended the hearing, and each party gave affirmed testimony. The landlord also called 3 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

Also, during the course of the hearing it was determined that the landlord issued a 1 Month Notice to End Tenancy for Cause, and the tenant's dispute is with respect to that notice. I also amend the application to show that the tenant applies for an order cancelling a 1 Month Notice to End Tenancy for Cause and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

During the course of the hearing the landlord stated that he had not received the tenant's evidentiary material. The tenant testified under affirmation that a copy of all evidentiary material was given to the property manager. Also during the course of the hearing the parties referred to several different agents of the landlord, including current and previous property managers and I accept the tenant's testimony that an agent was provided with the evidence. All evidence and testimony of the parties and the witnesses is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that prior to this tenancy, the rental unit was occupied by the tenant's mother, and when she passed away in 2006 the tenant moved in. A tenancy agreement has been provided which was signed by a landlord and the tenant on January 3, 2013 for a tenancy commencing on August 1, 2006, and the tenant still resides in the rental unit. Rent in the amount of \$620.00 per month is currently payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$272.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 42 rental units.

The landlord further testified that another agent of the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on May 31, 2015 by putting it under the door of the rental unit. A copy of the notice has been provided and it is dated May 31, 2015 and contains an effective date of vacancy of June 30, 2015. The reason for issuing the notice is:

- Tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that on May 24, 2015 the landlord gave the tenants notice to inspect the units on May 26, 2015 for the purpose of inspecting the decks in the building. When the landlord arrived, he knocked several times and no one was home, so the landlord entered and found the notice to inspect on the floor inside the rental unit. The landlord was accompanied by a maintenance person and they proceeded to look at the deck and found that the rental unit was being used for other purposes. There were tools in the dining room, parts of various electronic equipment scattered around, an ashtray was filled to the brim and the unit was generally very untidy and it appeared as though the carpet was being used as a work bench; it was very dirty. There were also cigarette burns on the carpet, but the carpet has never been replaced in the unit.

After the notice was issued there was a fire in the rental unit. Another tenant went to the tenant's rental unit and found the tenant in a confused state and smoke was

emanating from a waste basket, which was fairly heavy and noticed by several tenants. The tenant had emptied live cigarettes into the waste basket.

The landlord has had property managers looking after the rental units until about a year ago, and the current property manager does not reside on the property. The landlord had suggested to her to talk to the tenant to see what the tenant would like and negotiate a settlement. On her own initiative she suggested to the tenant that the rental unit could be renovated if the tenant was prepared to agree to a rent increase.

The landlord's first witness is a maintenance employee for the landlord. The witness, along with the previous property manager and the landlord were at the rental unit on May 26, 2015 to check the deck. When they arrived, the notice to inspect was still on the door and the tenant wasn't at home. They entered the rental unit after knocking several times. The witness saw burn holes in the carpet, ashtrays everywhere and one wall was a mess. The rental unit was not in a state of normal living conditions.

During cross examination the witness testified that there were 2 ashtrays on a computer desk.

The witness was not in the rental unit when he heard of a fire, but smelled smoke. The witness does not know where it was coming from.

The landlord's second witness is another tenant in the rental complex, and has been inside the tenant's rental unit and recalls an incident of smoke or a fire. There was smoke in the hallway. He attended at the rental unit with a landlord's property manager and again with another agent or property manager. They knocked on the door, which was open and the tenant was on the balcony. The tenant came to the door and looked disoriented. He didn't notice smoke but it was strongest near the entry to his suite and in the hallway. The agent grabbed a garbage bag out of the storage room which had stuff smoldering in there and the bag was wet with coffee filters in it.

The witness further testified that he was in the kitchen and saw the dining room. The rental unit looked like a man that is a fixer-upper who buys stuff and fixes it up to sell. The rental unit was not a disaster. He saw a kitchen table, 2 boxes and some tools but nothing like cigarettes or smoking material.

After the tenant was given a notice to end the tenancy he invited the witness in to look at the damage. The witness stated that it looked like the tenant repairs things and the tenant told the witness that he was told the unit was messy, but the witness didn't see that.

The elevator is about 10 feet from the tenant's apartment door, but the witness is not aware of any repair to it the day of or after the smoke incident.

The landlord's third witness is the current property manager of the rental unit and began such duties on June 1, 2015. The previous property manager had mentioned that there was a problem with the rental unit; the tenant was doing mechanics in there and other such issues. On July 9, 2015 the property manager met the tenant at the apartment and the witness found the rental unit to be clean and found no issues. The carpets were clean, the rental unit was generally clean and there was nothing that concerned the witness, but did notice burn marks in the carpet. There was no tool box in the dining room, nor any evidence of a fire, and the witness did not smell smoke. It didn't appear that the tenant was doing construction but it was a planned appointment so he could have cleaned it up. The witness suggested that an upgrade could be done to the rental unit if rent was increased, but the tenant wasn't interested.

The tenant testified that there have been no renovations or upgrades to the rental unit for over 20 years, so anything in there is normal wear and tear. There is no damage other than a small hole in a wall that was either caused by moving the tenant's mother out or moving himself in.

During the tenancy the roofing was replaced, and the workers threw the old materials into a truck over the tenant's balcony. It left black marks, tar and a mess and also ruined the tenant's computer. The tenant wasn't home at the time and asked an agent of the landlord who was going to clean up the mess and he just laughed.

The tenant has been attended rehabilitation through Worker's Compensation for a back injury and was out of town a lot during that 6 months. As a result of his injury the tenant wasn't able to do the cleaning or put away his tool box.

The tenant sells items on e-Bay so when the landlord was in the rental unit there may have been clutter around, but mostly antiques and collectables. The décor changes all the time, but he buys and sells such things as antiques, coins, silver, gold, collector cans, and got 2 antique record players for free. The tenant doesn't fix anything, he just wipes the dust off and sell them "as is."

The tenant testified that there is not extraordinary damage to the rental unit and seeks an order cancelling the 1 Month Notice to End Tenancy for Cause.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it.

In this case, the landlord lead a lot of evidence with respect to a fire or smoke, but all evidence shows that any such incident was not related in any way to the issuance of the notice. In fact, the notice was issued prior to the alleged incident.

There is absolutely no evidence before me to satisfy me that any damage has been caused to the rental unit by the tenant. I accept the testimony that there are burn holes in the carpet, and I also accept the testimony that roofers caused a lot of tar and debris to land on the tenant's balcony. I also accept the testimony of both parties that the carpet has never been replaced, and I find that any damage that may exist is not extraordinary damage and the landlord has not established cause to issue the notice. The notice to end tenancy is hereby cancelled and the tenancy continues.

The tenant's position is that the landlord's agents knew the tenant was away when notices were issued, and as such entered the rental unit on 2 occasions to serve notices. There is no evidence to support that, and the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated May 31, 2015 is hereby cancelled and the tenancy continues.

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: August 06, 2015

Residential Tenancy Branch

