



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKSVILLE LIONS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on July 23, 2015 and for an order of possession.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing the tenant confirmed that they do not need an order of possession as they have always had possession of the rental unit. Therefore, I dismiss this portion of the tenant’s application.

Issue to be Decided

Should the Notice issued on July 23, 2015 be cancelled?

Background and Evidence

The tenancy began on October 1, 2013. Rent is determined by BC Housing. No security deposit was paid.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 31, 2015.
The reason stated in the Notice was that the tenant has:

- Not done required repairs of damage to the unit; and
- Breach of a material term of a tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that on July 13, 2015, there was a report of an explosion in the tenant's rental unit that was heard and felt by several other occupants of the building. The agent stated that the fire department attended to the tenant's rental unit and it was discovered that the tenant was not home. In addition, the tenant had left an unopened canned good on the stove with the heating element on, resulting in an explosion. Filed in evidence are photographs of the rental unit, which were taken on July 13, 2015.

The landlord's agent testified that prior to the above incident the tenant was advised that they needed to clean their rental unit so it meets health and safety standards; however, those directions were not followed

The landlord's agent testified on July 14, 2015, the tenant was given formal written notice that they are required to maintain a safe and clean environment in the rental unit and that they would be conducting an inspection of the rental unit on July 23, 2015 to ensure compliance. The agent stated that the tenant was cautioned in the letter if compliance was not met a notice to end tenancy would be issued. Filed in evidence is a copy of the letter dated July 14, 2015.

The landlord's agent testified that on July 23, 2015, they attend the rental unit and the tenant informed them that they have not complied with the letter and they should go ahead and issued the notice. The agent stated that resulted in the notice being issued on July 23, 2015.

At the hearing the landlord's agent asked if the hearing could be temporarily delay, as they would like to inspect the tenant's unit, as they were willing to work with the tenant if progress has been made on the state of the unit. However, the tenant declines to allow an inspection to occur.

The tenant testified that they agreed that the tenancy agreement contains a term that the must maintain the rental unit in a condition that complies with health and safety standards. The tenant agreed that they have breached that condition. The tenant confirmed they have not made the necessary repairs after the explosion in the rental unit occurred, such a painting or cleaning.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows;

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered 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:

- Not done required repairs of damage to the unit; and
- Breach of a material term of a tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this case the tenant had been verbally warned by the landlord to ensure the tenant maintained the rental unit that complies with health and safety standards.

On July 13, 2015, an explosion occurred in the rental unit, when the tenant was not at home. The explosion was due to the tenant's neglectful action of leaving an unopened canned good on the stove, to which the heating element was on. The explosion caused minor damage to the walls. I find the tenant's action of leaving the stove element on unattended and leaving items on or near the stove neglectful. I further find the photographs show the unit is not being maintained in a state that complies with health and safety standards.

On July 14, 2015, the tenant was given written notice that the damage must be repaired and the rental unit cleaned to comply with the health and safety standard which is a term of their tenancy agreement and a requirement of the Act. The inspection was to occur on July 23, 2015.

On July 23, 2015, the landlord's agent attended the rental unit to complete the inspection and the tenant informed the agent that they have not complied with their letter and that they should issue the notice to end tenancy.

The tenant at the hearing agreed they have breached a material term of the tenancy agreement by not maintaining the rental unit that complies with health and safety standards.

Although the landlord was not required, the landlord's agent gave the tenant another opportunity to complete the inspection of the rental unit, as the rental unit is directly across from their office and the landlord was still willing to work with the tenant if progress has been made to clean the premises. However, the tenant refused the landlord's offer. The tenant's action leads me to believe that the tenant continues to breach the tenancy agreement and the Act.

I find the Notice issued on July 23, 2015, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

As the landlord has accepted occupancy rent for the month of September 2015, I find it appropriate to extend the effective vacancy date in the Notice to September 30, 2015, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date pursuant to section 55 and 62(3) of the Act. This order must be served on the tenant and may be filed in the Supreme Court.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application to cancel the Notice, issued on July 23, 2015 is 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: September 09, 2015

Residential Tenancy Branch

