



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bella Coola Valley Senior Citizens Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was set to convene at 9:00 a.m. on this date to address a claim by the tenant for an order setting aside a notice to end this tenancy. At the appointed time, I accessed the conference call hearing as did the landlord, but due to an apparent problem with the telephone conference call system, we were not connected to each other. At 1:00, I accessed the system again to discover that the landlord had waited on the line and we were able to speak at that time. It is not clear whether the tenant attempted to access the hearing at 9:00. At 1:00, I attempted to telephone the tenant at both of the telephone numbers he provided, but he did not answer those calls.

Ordinarily, I would have rescheduled the hearing in such unusual circumstances in order to ensure the tenant was given opportunity to participate in the hearing. However, upon reviewing the file, it was apparent that the landlord could not succeed in ending the tenancy based on the difficulties outlined below, so I determined it was appropriate to adjudicate the issue as the tenant was ultimately successful.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

On September 21, 2015, the landlord served on the tenant a one month notice to end tenancy for cause (the "Notice"). The Notice did not contain details about why the landlord wanted to end the tenancy, but an accompanying letter stated that the tenancy needed to end because the tenant was not capable of residing in the unit without assistance and because the tenant was smoking in the unit in violation of a material term of the tenancy agreement.

The landlord testified that the tenant had a motorized wheelchair which the building was not designed to accommodate and that the tenant relied on staff members, who were all volunteers, to open doors for him. They further expressed concern that the tenant could not live independently and they feared that he would be unable to quickly evacuate the building in an

emergency. The landlord did not serve the tenant with a written warning advising that he had breached a material term of the tenancy.

Analysis

The *Residential Tenancy Act* lists very specific reasons why a landlord may end a tenancy and a concern that a tenant is unable to live independently is not among those contemplated by the legislation. However, concerns about damage to the rental unit or residential property and a breach of a material term of the tenancy agreement are among the reasons why a landlord may end a tenancy. In this case, the landlord did not provide evidence to corroborate their claim that the tenant had caused damage to the unit or property and did not provide the tenant with a written notice that he had breached a material term of the agreement and given him a reasonable time to correct that breach. Further, the landlord did not indicate on the actual Notice why they wanted to end the tenancy. The Act requires that the Notice itself give the reason for ending the tenancy.

For these reasons, I have determined that the Notice should be set aside and I so order. As a result, the tenancy will continue. The landlord is free to serve another Notice in accordance with the requirements of the Act.

I encourage the parties to meet to discuss the landlord's concerns in order to prevent the need for another hearing.

As the tenant has been successful in his application, I find he should recover the \$50.00 filing fee and I award him that sum. The tenant may deduct this amount from a future rental payment.

Conclusion

The Notice is set aside and the tenancy will continue. The tenant may deduct \$50.00 from a future rental payment.

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: December 02, 2015

Residential Tenancy Branch

