



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B C Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, LRE, AAT, OPC, O, FF

Introduction

This hearing dealt with two related applications. One was the tenant's application for orders compelling the landlord to comply with the Act, regulation or tenancy agreement; suspending or setting conditions on the landlord's right of entry; and allowing the tenant access to the rental unit. The other was the landlord's application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause.

Both parties appeared. No issues regarding the exchange of evidence were identified.

Issue(s) to be Decided

- Should any orders be made against the landlord and, if so, on what terms?
- Should an order of possession be granted and, if so, on what terms?

Background and Evidence

This month-to-month tenancy commenced March 1, 2009. The rental unit is a bachelor suite located in a low rise building. The tenant's rent is subsidized; his share of the rent is \$328.00, which is due on the first day of the month.

The landlord's evidence is that they had been receiving complaints about the tenant and on October 26, 2015, they gave the tenant a second warning letter about the volume of traffic to and from his unit and the noise at his unit.

On October 30, 2015, there was a fire in the tenant's unit. The fire set off two sprinklers, which then ran for fifteen minutes. The landlord's evidence is that the water flowed to the ground floor.

The fire department attended and the tenant was taken to hospital. The landlord testified that staff spent about six hours cleaning up the water and taking remedial action. Some of the firefighters stayed to help with the clean-up efforts.

The tenant was treated at the hospital for second degree burns to his hands. When he returned to the building he was told he could not re-enter his unit. His evidence is that he was told he had no rights to the unit; the landlord's evidence is that the fire department ordered that the unit was uninhabitable.

The tenant was moved to the respite unit in the same complex and was still living there as of the date of the hearing.

The fire department inspected the unit on November 2 and electricity was restored to the unit on that date.

The fire chief subsequently came to see the landlord. He expressed concern about the fire and the situation in the rental unit. Those concerns were set out in an e-mail to the landlord dated November 5 which stated, in part:

"Observations & reports confirmed the incident may have been related to illegal use of drugs. The smoke alarm had been removed from the suite & the self-closure on the suite to common hallway door, had been disconnected."

The tenant testified that he was filling up his butane lighter when he spilled butane on the couch. It ignited and started a fire. He was able to put the fire out before the sprinklers started. He said there was no drug activity involved and he questioned how the fire chief could make that statement.

The tenant testified that the day before the fire he noticed that the smoke detector was not working so he had taken it down in advance of replacing the batteries. When the landlord pointed out that the smoke detector is hard-wired to the electrical system the tenant responded that it has batteries for back-up and he was going to replace those.

With regard to the self-closure the tenant noted that it is a wooden door, not a fire-rated door.

The tenant's position is that it was a small fire; that he put it out promptly; and the only damage was to his personal property. The landlord's position is that it takes intense heat to activate the sprinklers and the tenant is underestimating the seriousness of the situation.

The landlord and tenant gave different accounts as to when the tenant was able to re-enter the unit and when the tenant removed his possessions from it.

The tenant filed his application for dispute resolution on November 12.

The parties did agree that by the date of the hearing the tenant's possession had been moved to storage in the complex and he had retrieved his cat.

The tenant testified that when he first went into his unit he observed that his things had been moved around. His friend and neighbour testified that on the night of the fire he saw the tenant's staff going through the tenant's belongings. They both argued that this was an infringement of the tenant's rights.

The landlord testified that its' staff and the firefighters did move the tenant's belongings in the course of cleaning up the water.

The landlord testified that the unit is being renovated to ensure that no mold or other issues will develop as a result of the water. The tenant is of the view that the unit did not suffer any damage as a result of the incident. He says that when he first went back to the unit – about a week after the fire – the unit was dry and there were no fans in place. He said the unit is being repaired but they are just the usual repairs made when a unit is being readied for a new tenant.

The landlord tried to negotiate an end to this tenancy with the tenant. When those efforts were unsuccessful they issued and served the tenant with a 1 Month Notice to End Tenancy for Cause on November 27, 2015.

The tenant never disputed the notice. He testified that he had asked a friend to file an application for dispute resolution but it was only a few days before the hearing that he found out that his friend had failed to do so. The tenant is of the view that the manner in which the landlord handled the situation after the fire amounted to an improper eviction.

The tenant's rent is paid directly by the Ministry. No rent was paid for December but payment was provided for January. The landlord's witness did not know if a receipt had been provided for the January rent. The tenant said he had not been given a receipt.

Analysis

The tenant was served with a 1 Month Notice to End Tenancy for Cause in the proper form. He did not file an application to dispute the notice within the time required and pursuant to section 47(5) is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

The tenancy ended on December 31, 2015.

When a landlord accepts rent for the period after the effective date of a notice to end tenancy the question may arise as to whether the landlord has reinstated the tenancy by doing so. If, in a dispute resolution proceeding, a party claims that the tenancy has been reinstated by the payment, the arbitrator must consider all the circumstances, including the intent of the parties when the payment was made. As explained in *Residential Tenancy Policy Guideline 11: Amendment and Withdrawal of Notices* intent can be established by evidence as to:

- whether the landlord gave the tenant a receipt that said the money was received for use and occupation only;
- whether the landlord specifically informed the tenant that the money would be for use and occupation only; or,
- the conduct of the parties. Here the question is whether the conduct of the landlord is inconsistent with any other honest intention than an intention of waiver, provided that the tenant has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment.

The tenant did not argue that the tenancy had been reinstated by payment of the January rent. Even if he had, there is no evidence that he had been induced by the landlord's behavior to think that the landlord was changing its' mind about wanting to end this tenancy.

I find that the landlord did not reinstate the tenancy by accepting the January rent and I grant the landlord an order of possession effective January 31, 2016.

As the tenancy has ended the tenant's application is no longer relevant and is therefore dismissed.

As the landlord was successful on its' application it is entitled to reimbursement from the tenant of the \$50.00 fee it paid to file it. A monetary order in the amount of \$50.00 is granted to the landlord.

Conclusion

- a. An order of possession effective January 31, 2016 is granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order in the amount of \$50.00 has been granted to the landlord. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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: January 26, 2016

Residential Tenancy Branch

