



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC RP

Introduction

This hearing convened on January 11, 2016 for 24 minutes to hear the matters pertaining to the Tenant's application. The hearing was adjourned and an Interim Decision was issued on January 11, 2016. Accordingly this Decision must be read in conjunction with my January 11, 2016 Interim Decision.

The hearing reconvened on March 10, 2016 for 118 minutes. The Landlord and Tenant were represented at both the initial hearing and the reconvened hearing. Each person gave affirmed testimony.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

During the hearing the parties clarified the corporate Landlord had a similar name as the management company who is currently managing the building as landlord. The respondent named on this Decision was the management company.

The respondent, herein after referred to as the Landlord, was represented by 3 Agents. The two male Agents were employed by the Management Company and K.D. was an agent employed by the corporate Landlord. I determined that each Agent met the definition as a landlord as provided in section 1 of the *Act*. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

On December 24, 2015 the Tenant submitted 65 pages of evidence and one C.D. of digital evidence to the Residential Tenancy Branch (RTB). The Tenant affirmed that he served the Landlord with copies of the same documents and digital evidence that he had served the RTB. The Landlord acknowledged receipt of those documents and digital evidence. No issues regarding service or receipt were raised by the Landlords. As such, I accepted the Tenant's submissions as evidence for these proceedings.

On January 6, 2016 the Tenant submitted 2 pages of evidence consisting of proof of service documents regarding service of his hearing documents and evidence to the Landlord's Agent on November 2, 2015 and on December 24, 2015.

On December 31, 2015 the Landlord submitted 21 pages of evidence to the RTB. The Landlord testified copies of their evidence were served to the Tenant when it was sent registered mail on December 31, 2015 to the Tenant's lawyer's office. The Landlord argued the Tenant's service address had been provided to them by the Tenant many times in the past and in fact the Tenant had argued in past cases they were required to serve their documents to his law office and nowhere else.

The Tenant submitted he had not been properly served with the Landlord's evidence. He argued the Landlord had sent the evidence to a law firm instead of sending it to his rental unit 315, which was the service address listed on his application for Dispute Resolution.

The Tenant argued that the Landlord had been told numerous times in previous hearings to serve evidence to the address listed on the application and to ensure it was served in the required timeframes. The Tenant asserted that the Landlord had to learn how to read the applications and to not make assumptions.

The Landlord, K.D., submitted that they had had upwards of 20 plus hearings with this Tenant in the previous year during which the Tenant insisted all evidence and documents were to be served to his law firm. She said they had asked numerous times for him to allow service at the rental unit address, as it would be easier for them. However, the Tenant continuously refused their requests.

The Tenant confirmed he had not resided in rental unit 315 since late in the day of October 28, 2015; despite having listed unit 315 as his service address on his application. He stated he had been relocated to unit 302 on October 28, 2015 right after a fire occurred in unit 315. The Tenant submitted that he would be picking up the Landlord's evidence package on Wednesday January 13, 2016.

The Tenant argued, in addition to being served to the wrong address, the Landlord had served their evidence late. He stated that he was not informed of the evidence being received at the law office until Friday January 8, 2016.

The Landlord, K.D., testified that the evidence was served via registered mail on December 31, 2015. She provided the Canada Post tracking number in her oral submission and stated that the package was signed received on January 6, 2016. She stated that she is the person who normally compiles and serves the evidence on behalf of the corporate Landlord and she was out of the Country for most of December 2015. She said that her offices are not located at the rental unit building so it takes time for her to receive the evidence from the company who manages the building and get it compiled and served.

The Tenant testified that he had knowledge that the law firm was closed January 4th and 5th, 2016 for holidays. He argued that the application listed only one respondent, the company who manages the building, and not the owner. The Tenant asserted that the named respondent is located at the building and are on site 24 hours per day 7 days per week.

At the outset of the March 10, 2016 reconvened hearing the Tenant affirmed he had picked up the Landlord's evidence on January 11, 2016. He confirmed he has had an opportunity to review that evidence and is prepared to provide an oral response.

Rule of Procedure 3.17 provides, in part, the arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Both parties must have the opportunity to be heard on the question of accepting late evidence.

Rule of Procedure 3.17 further states if the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*].

Rule of Procedure 3.7 stipulates to ensure a fair, efficient and effective process, an identical package of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each respondent and submitted to the Residential Tenancy Branch directly or through a Service BC office. To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

After consideration of the submissions from each party, I find the Tenant was in receipt of the Landlord's evidence with enough time to prepare his oral response to that evidence. Therefore, I considered all documentary submissions from each party as evidence as well as the Tenant's digital evidence, excluding the Landlord's photographs as explained below.

After a review of the evidence received by both parties I accepted each party sent copies of the same documents and photographs to the other party, excluding the type of photographs. To clarify, the undisputed evidence was the Landlord served the RTB with colored photographs and served the Tenant black and white photographs.

The Landlord confirmed they were able to review the Tenant's digital evidence. The Landlord argued that they had been involved in so many hearings with this Tenant (upwards of 20 in the last year) that they could not afford to serve him colored photographs each time. The Tenant argued that the photographs he received were faint and grainy to the point where some of the items in the photographs were illegible.

During the hearing the Tenant was able to describe most of the objects he saw in the Landlord's photographic evidence which matched the photographs submitted in color to the RTB by the Landlord. Therefore, I considered the Landlord's and Tenant's oral submissions regarding what was visible in the black and white photographs served upon the Tenant from the Landlord.

Each party was provided with the opportunity to present relevant oral evidence, to ask questions of each other and each witness, and to make relevant submissions. Following is a summary of those submissions. While I may have considered all relevant evidence that was before me, not all that evidence is listed in this Decision.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued October 30, 2015 be upheld or cancelled?
2. Was the Tenant's request for repairs heard in these hearings or was that request severed?

Background and Evidence

The hearing was convened to hear matters relating to the tenancy for unit 315. The Tenant occupied unit 315 as of approximately August 14, 2015. On November 10, 2015 the parties entered into a written fixed term tenancy agreement that began on November 1, 2015 and switched to a month to month tenancy after January 1, 2016. As per the written tenancy agreement submitted into evidence, rent of \$450.00 was payable on or before the first of each month. On November 13, 2015 the Tenant paid \$225.00 as the security deposit.

As per the Rules of Procedure, the Landlord presented their evidence in support of issuing the 1 Month Notice first. The Tenant then presented his submissions before testimony was heard from the Tenant's witnesses.

Landlord's submissions

K.P. began her testimony by stating the "Landlord is worried the fire was started by the Tenant". K.P. then clarified that a fire occurred in unit 315 on October 28, 2015. The fire was detected by I.M. sometime between 12:00 p.m. and 12:30 p.m. that day.

K.P. alleged the Tenant had been seen in the building at 12:00 p.m. by I.M. who had allegedly engaged in a conversation with the Tenant at that time, regarding someone attempting to gain access into the building from the third floor fire escape. K.P. stated I.M. later checked the video footage from the third floor and could not see anyone matching the description provided by the Tenant.

The Landlord, I.M., testified he heard the main fire alarm go off and at 1:00 p.m. he notified the Director of a fire in the building. I.M. then switched his testimony to speak

about having a conversation with the Tenant in the third floor hallway around 12:00 p.m. that day when the Tenant had told him about seeing someone attempting to gain access into the rental building from the third floor fire escape. He corrected K.P. submission saying there were no cameras on the third floor and he had checked the camera footage for the front entrance to see if anyone had left the building matching the Tenant's description.

I.M. submitted he was on the main floor when he heard the fire alarm bells sometime after 12:00 p.m. He said that is when he started to do his fire sweep of the building, searching for the location of the fire, while telling people to evacuate the building.

I.M. stated when he arrived on the third floor the Landlord's contractor "T" and another tenant J.W. (the Tenant's Witness 2) told him the fire was located in unit 315, the Tenant's rental unit. I.M. stated he left to go get the keys for the Tenant's rental unit and when he returned he gave T and J.W. the keys and they entered the Tenant's unit.

I.M. asserted that they looked inside unit 315 to make sure no one was inside the Tenant's unit. Then they closed the door and he called 911. He said they evacuated the building and at 1:10 p.m. he called J.R., the Landlord's Director.

I.M. submitted that shortly after calling their Director he saw the Tenant sitting on the third floor in the hallway near unit 315. He said the Tenant appeared to be "winded" and out of breath, so he asked if the Tenant needed medical attention.

I.M. stated unit 302 had been vacant and recently updated so they offered the Tenant the opportunity to move into unit 302.

I.M. testified both unit 315 and the bar located in the basement suffered significant water damage. He confirmed there was also water damage in other areas which resulted from the fire suppression sprinkler system going off and the fire department spraying unit 315.

I.M. said that on October 30, 2015 he was advised by the Director, J.R., to issue the Tenant a 1 Month Notice to end tenancy. He submitted the Notice was issued due to the way in which the fire had been caused by discarded cigarettes which were left in the pile of garbage on the floor in unit 315. He said he was told the main reason the Notice was issued was because the fire had put a number of people at risk. I.M. stated he completed the Notice checking off the reasons he was instructed to check off. The Notice was completed listing 4 reasons which I.M. reiterated were related to the manner in which the fire had started in the Tenant's room, unit 315.

The 1 Month Notice was issued October 30, 2015, pursuant to Section 47(1) of the Act listing an effective date of December 1, 2015 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
 - Damage the landlord's property
- Tenant has caused extraordinary damage to the unit/site or property park

K.D. stated the Tenant had installed his own lock and was the only one who had access to unit 315; therefore, he is responsible for the cause of the fire. She later changed her testimony to say the Tenant and the management company had a key to unit 315.

K.D. argued the time line stated in the Tenant's submission, where he said he was at his lawyer's office between 12 and 12:30 p.m., does not match the submissions of I.M. She questioned why the Tenant had not submitted evidence proving he was at his lawyer's office during that time.

K.D. argued she had obtained information from the fire department that a cigarette could smoulder for 30 to 60 minutes prior to igniting a flame. She asserted that the smoldering timeframe matched the events which occurred on October 28, 2015 because the Tenant had been seen at the rental unit around 12:00 p.m. and the fire started shortly afterwards.

M.C. testified that he has been employed with the Landlord for several years and normally deals with re-housing tenants in cases where the rental unit has suffered damage from a fire. He argued he was of the opinion the *Act* provides a landlord is not required to house a tenant after a fire occurs. M.C. asserted that they were under no obligation to continue to house the Tenant after the fire and they simply did so out of goodwill to the Tenant.

M.C. argued they had evicted the Tenant properly for cause due to the Tenant's careless smoking. He submitted he was of the opinion by serving the Tenant the 1 Month Notice for unit 315 the Tenant would be evicted from the entire building, regardless of the Tenant being offered the opportunity to reside in unit 302 after the fire occurred. M.C. confirmed the Tenant has continued to reside in unit 302 since the fire occurred almost five months prior to this reconvened hearing.

I.M. testified unit 315 was renovated after the fire. Upon further clarification I.M. clarified that when he said unit 315 was renovated he was talking about repairs which were completed after the fire. Those repairs included: the removal of the carpet; leaving a 20" table fan inside the unit to dry it out; painting of the walls and the floor; replacement of the window, and repairs to the sink.

M.C. submitted he was the person who placed the 20" table fan inside unit 315 to dry the room out for approximately 1 ½ days. He argued the paint that was used on the floor was a rubber-based paint and not regular paint.

I.M. stated unit 315 was renovated very quickly and on approximately November 2, 2015 the Tenant was told he could move back into unit 315 but he refused. After the Tenant's refusal to move back into unit 315 the Landlord rented unit 315 to a different tenant effective November 10, 2015. I.M. stated the Tenant remains in unit 302 and the Landlord has since changed their computer system to show the Tenant is occupying unit 302 and the Tenant's rent is being received as payment for unit 302.

K.D. requested the credibility of the Tenant's Witness 2 be called into question as this person is currently being charged with breaking and entering of the Landlord's property.

Tenant's submissions

The Tenant argued the fire was an act of sabotage. He asserted someone went into his rental unit and piled a large amount of his RTB papers, relating to several RTB cases he is currently involved with, into a pile on the floor where the fire was ignited. He said his RTB paperwork involves numerous different cases and different tenants so he has had to keep that paperwork sorted and in order. He argued his RTB paperwork was always neatly sorted and stored inside the rubber totes seen in the photographs.

The Tenant stated there was further evidence of sabotage because his medications had been dumped on top of the pile and the empty pill containers could be seen in the photographs. He argued he always placed his extinguished cigarette butts in a large white bucket as shown in the photographic evidence. He argued he would never dump his extinguished cigarettes into a plastic garbage bag and leave the bag on a pile of paper in his room. He noted the letter submitted from the fire department by the Landlord indicated there was a plastic bag of cigarette butts in a pile of paper.

The Tenant asserted the Landlords have tried to evict him on numerous occasions and have failed each time. He confirmed that he has been and is currently involved in cases against this Landlord as a tenant and as a representative for other tenants. The Tenant noted that one of the Landlords who were present at this hearing was also involved in an open police file regarding threats to his life.

The Tenant acknowledged that he had made a typing error in his written submissions when listing the dates the fire occurred. He asserted those errors were the result of being very distraught after the fire. He stated he had personally picked out unit 315 to be his room as it was the only one that had carpet and it was large enough so that he could have his desk and his computers inside.

The Tenant argued he always kept his room clean and organized as he would often meet with other tenants in his room to discuss their RTB cases. He pointed to his photographs prior to the fire which show how organized his room was. He noted those photographs also show the white bucket where he always disposed of his cigarette butts. He asserted the same bucket is seen in the photographs submitted by the Landlord after the fire.

The Tenant stated he certainly would never pile his RTB papers in a big pile; dump all of his medication on the pile; and then discard a cigarette or a bag of cigarette butts into the pile. He argued that pile was suspiciously placed directly under the sprinkler head. He stated it was also suspicious that his white bucket with the cigarette butts in it was drawn up close to the pile.

The Tenant stated he had a conversation with the fire inspector who told him in order for that type of fire to engage with enough heat and smoke to set off the fire sprinkler system a certain type of accelerant had to have been used. He said the fire investigator also told him there would be no investigation in this type of fire as it was private property and no one was injured.

The Tenant testified the fire department's report indicated the fire was accidental. However, based on the Landlord's submission the Landlords' definition was interpreted as the fire being intentional.

The Tenant disputed the submission that the fire department told the Landlord how long a cigarette could smolder. He argued that information would have been obtained by the Landlord through a search on the internet and not from the fire department.

The Tenant disputed the Landlord's submission that he was the only one with a key to his room. He reminded the Landlords that they too had a key which could be accessed by their staff members. The Tenant stated he has never duplicated his key and never gave out his key. He argued that he would never leave anyone alone in his room, even when he was stepping out just to go to the bathroom, due to the amount of confidential RTB files he kept in his room.

The Tenant argued that he was nowhere near the rental unit or building when the fire occurred. He stated he had left early that morning at 8:40 a.m. to go to the RTB office to check the status on several files he was involved with. Then he was picked up by Witness 1(W.P.) to attend a 10:00 a.m. meeting with a local advocacy group. He left that meeting and went to his lawyer's office. He submitted he had a conference call with his lawyer sometime between 12:00 and 12:30 p.m.

The Tenant said it was shortly after that conference call he received a call that he had to return to his rental unit immediately. He said he could tell that something was wrong so he ran all of the way there. The Tenant stated he was devastated to see all of his computer equipment and hard work on those RTB papers ruined.

The Tenant stated the Landlord confirmed they had security camera footage of who was leaving and entering the building. He questioned why the Landlord did not submit that evidence to prove their allegations that he was in the building at 12:00 p.m. the day of the fire. He asserted they did not submit that evidence because it would have shown he left the building before 8:30 on the day of the fire and he did not return until after the fire was discovered. The Tenant argued the conversation I.M. was talking about regarding a

person trying to enter the building from a fire escape happened one week after the fire, not on the day of the fire.

The Tenant confirmed he had refused to move back into unit 315 on or around November 2, 2015. He asserted the Landlord failed to complete the required repairs properly and as a result he was concerned that mold would grow in unit 315. The Tenant disputed the Landlords' submissions and argued there was never a fan or dehumidifier placed in unit 315 after the fire. He asserted the Landlords simply removed the carpet, painted the floor and the walls during a time when there was no heat in the room. He said the rubber paint used by the Landlords on the floor would seal in moisture in the wood floor creating a space for the mold to grow. He stated he had taken a moisture meter into unit 315 recently and there were moisture levels detected around the baseboards. He pointed out that he included a request for repairs on his application that was filed on November 2, 2015.

Tenant's Witnesses' Submissions

Witness 3 (B.S.) testified he was a tenant in the building and was assisting the Tenant with some of his RTB paperwork. Witness 3 stated on the day of the fire the Tenant had dropped some papers off to him and then 15 – 20 minutes later the smoke alarm went off. He went into the hallway and could see water coming out from under the Tenant's door. He stated that I.M. and the maintenance person were already standing outside the Tenant's door when he first went out of his unit. He said that was about 12:45 p.m.

Upon further clarification, Witness 3 stated the Tenant had dropped off the paperwork to him early in the morning sometime between 8:00 and 9:00 a.m. but he did not start to work on it until around 11:00 a.m.

The Landlords questioned Witness 3 to clarify if he was certain it was around 8:00 a.m. when the papers were dropped off by the Tenant. Witness 3 stated yes, because he recalled going for his coffee shortly afterwards and coffee time is between 8:00 a.m. and 9:00 a.m. The Landlords noted that Witness 3 initially stated the papers were dropped off around 11:00 a.m. and then changed his story to say they were dropped around 8:00 a.m. The Landlords submitted Witness 3 was being coached.

Witness 1 (W.P.) testified she was an advocate who has been assisting the Tenant with several of the RTB applications. She stated she had been with the Tenant early on the morning of the fire. She asserted she picked the Tenant up at 9:30 a.m., in her car, from the RTB office to take him to a meeting they had scheduled with another agency at 10:00 a.m. That meeting went from 10:00 a.m. to 11:00 a.m. and as it ended the Tenant told her he would walk from that location to his lawyer's office.

Witness 1 submitted that sometime after the Tenant left their meeting she had received a telephone call from the Tenant who was very distraught. She said he told her a fire had broken out in his room. She said she went to the building right away and was told by M.C. that she could not go in to see the Tenant. She said she told M.C. that she

needed to see the Tenant as he sound very distraught. She said she had to insist to M.C. that she needed to see the Tenant before M.C. would finally let her ride up in the elevator. She said when she arrived on the third floor she saw the Tenant was sitting on the floor and was very distraught. She said this fire was very traumatic for the Tenant and he lost everything.

The Landlords questions Witness 1 and confirmed that she stated she had picked the Tenant up at 9:30 a.m. from the RTB office. M.C. submitted he had not refused her access to the building to which Witness 1 reminded him he was trying to prevent her from staying in the elevator. She reminded M.C. that he was also standing inside the elevator and she told him she was going up to see the Tenant. M.C. responded stating there had just been a fire in the building and they do not let people into a building during a fire.

Witness 2 (J.W.) testified he had previously been employed by the Landlord as a maintenance employee. His employment ended in October 2014 and he did some contract work up to the spring of 2015. He was employed in the bar downstairs on the day of the fire where he was doing some maintenance work.

Witness 2 stated that on the day of the fire he had come up to the lobby area shortly after 12:00 noon and he saw "T" coming out of the elevator saying there was water and smoke coming out of unit 315. He said I.M. went to get the keys for unit 315 and Witness 2 said he rode up in the elevator with "T".

Witness 2 submitted I.M. handed him the keys and after he put his hand on the door to make sure it was not hot he opened up the door and saw there was nothing they could do to fight the fire. He attempted to remove some of the Tenant's computer equipment and then closed the door and locked it until the fire department arrived.

Witness 2 said he then called the Tenant and told him to get back to the building as soon as possible. He stated he stood by unit 315 until the Tenant and the fire department arrived. Witness 2 asserted he had to restrain the Tenant from trying to enter unit 315 when he arrived. He confirmed the Tenant was very distraught about the fire and the potential of losing everything.

Although they were given the opportunity to ask questions, the Landlords did not question Witness 2.

Final Submissions

The Landlords posed questions to the Tenant and asked a second time why the Tenant did not submit evidence that he had been on a conference call with his lawyer around noon on the day of the fire. The Tenant stated that he could provide written evidence if it was required. The Tenant then pointed out he could not submit additional evidence, as ordered in the Interim Decision.

The Tenant questioned the Landlords why they did not submit video footage of the time line that he left the building on the day of the fire. The Landlord respondent stating their video footage files were deleted after one week.

Prior to ending this hearing, I explained to both parties that I would be making a determination on whether the 1 Month Notice to end tenancy issued October 30, 2015 for unit 315, would be upheld or cancelled. If upheld the Landlord would be granted an Order of Possession for unit 315 in accordance with the *Act*. If not upheld, I would make a determination regarding the Tenant's tenancy of unit 315. The Tenant's requests for repairs to unit 315 have been severed from this application and hearing as determined below.

Each party was advised they were at liberty to file their own application for Dispute Resolution if they wished to obtain orders relating to possession of unit 302 as those issues were not before me during this proceeding.

The Landlords and the Tenant were each given an opportunity to comment on the aforementioned and were provided the opportunity to submit additional oral submissions at that time. No one raised questions or concerns and no additional evidence was submitted.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

As indicated above, I will not be deciding on all dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside, or cancel the Landlord's Notice to End Tenancy issued for cause; and I dismiss the balance of the Tenant's claim with leave to re-apply.

Notwithstanding my severing the Tenant's requests for repairs from his application, I find the Tenant made his application to seek repairs to unit 315 in a timely manner, pursuant to section 62 of the *Act*.

Upon review of the 1 Month Notice to End Tenancy issued October 30, 2015, listing an effective date of December 1, 2015, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 88 of the Act.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the Landlord need only prove one of the reasons.

When a landlord serves a tenant a 1 Month Notice to end tenancy, section 47(1) of the Act stipulates a landlord may end a tenancy (singular) by giving notice in accordance with the Act. I do not accept the Landlord's submission the Tenant would be evicted from the entire building based on service of the 1 Month Notice issued regarding the Tenant's tenancy in unit 315. Tenancy agreements cannot be combined and are not transferrable from one rental unit to another rental unit.

As indicated above, the issues regarding the Tenant's occupancy of unit 302 were not before me. As such, no findings of fact or law have been made pertaining to the Tenant's occupation of unit 302.

There was no dispute that a fire occurred in unit 315 on October 28, 2015 which caused significant water damage to the building. That fire also caused the Tenant to suffer a significant loss of his possessions and a significant amount of distress. The Landlords issued the 1 Month Notice October 30, 2015 listing 4 reasons which they asserted were all related to the fire in unit 315 which occurred on October 28, 2015. The Landlord presented three arguments to support their issuance of the Notice.

I first turned my mind to the Landlords' argument that the manner in which the fire had started in the Tenant's room, unit 315, was enough to evict the Tenant from the entire building because the Tenant was the only one who had access to unit 315.

By their own submissions the Landlords confirmed they had a key to unit 315 which was stored somewhere in the building. Although I.M. indicated he had to go get the key for unit 315, there was no evidence submitted regarding the actual location of the key at that time or how their key for unit 315 was stored. There was also no evidence as to who had access to that key storage. Therefore, I do not accept the Landlords' submissions that the Tenant was the only person who had a key to unit 315 or that the Tenant was the only person who could have allowed access to unit 315.

Secondly, I considered the Landlords' submissions that they had been involved in over 20 plus hearings with this Tenant including numerous hearings where the Tenant disputed Notices to end his tenancy and represented other tenants in RTB cases filed against the Landlord. The Landlords did not serve the Tenant the 1 Month Notice on the day of the fire; rather, they waited to issue the Notice until two days after the fire occurred.

As per the foregoing, it is reasonable to conclude the Landlords ought to have known the importance of gathering all relevant evidence to support the reasons why they issued the Notice. I do not accept the Landlords' response that their security footage was no longer available as it was wiped clear after one week. Rather, I conclude that if there was evidence that would prove the Tenant was in the building minutes prior to the start of the fire, such as security camera recordings, the Landlord would have made every attempt to secure that evidence immediately to prevent it from being deleted; especially when considering how many disputes these parties have been involved in.

Thirdly, I find the Tenant provided sufficient evidence to prove he left the building the day of the fire sometime before 8:30 a.m. to go to the RTB office. He also submitted evidence which supported he was picked up from the RTB office. There was sufficient evidence to prove the Tenant was with other people in meetings, away from the rental building, and he did not return until he was called back to the building after the fire had occurred. As indicated above, the burden to prove the reasons why the 1 Month Notice was issued lay with the Landlord and not the Tenant.

I accept the Tenant's evidence that he has worked extremely hard in the past to save his tenancy and has successfully disputed numerous notices to end his tenancy. I further accept the Tenant would not be so careless as to start a fire in his own room especially when the Tenant is currently involved in numerous cases against the Landlords, involving both RTB issues and issues with the police.

In addition, I found the Tenant's submissions that his RTB paperwork involved too many different cases requiring him to keep the paperwork well sorted and neatly stored in order for him to manage the sheer volume, to be reasonable and was supported by the photographic evidence. There was also credible evidence that the Tenant left his extinguished cigarettes in a large white bucket and not dumped into a plastic bag.

I find the Tenant's submissions that he would not dump out his prescription medications onto his RTB paperwork, left in a random pile on his bedroom floor, and would not then randomly discard cigarette butts in a plastic bag on top of the pile, to be reasonable given the circumstances and evidence presented to me during this proceeding.

There was insufficient evidence before me that would suggest the Tenant was engaged in illegal activity in unit 315 or in the building that caused the fire. In addition, there was insufficient evidence to prove the Tenant gave unsupervised access to unit 315 to someone else during his absence.

After consideration of the totality of evidence before me I find the Landlords submitted insufficient evidence to prove the Tenant or a person permitted on the property by the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and/or put the Landlord's property at significant risk.

In addition, I find there was insufficient evidence to prove the Tenant had engaged in illegal activity that had or was likely to damage the landlord's property or that the Tenant had caused extraordinary damage to the unit/site or property.

Based on the above, I find there was sufficient evidence to uphold the Tenant's application for Dispute Resolution and I hereby cancel the 1 Month Notice to end tenancy issued October 30, 2015. Therefore, the Tenant's tenancy agreement for unit 315 remains in full force and effect, until such time as it is ended in accordance with the *Act*.

Section 54(2) states the director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement.

Section 47(1)(k) of the *Act* provides that a landlord may end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

As the Landlords have identified unit 315 was rented to a third party tenant as of November 10, 2015, I find it necessary to grant occupancy to this Tenant with as little impact on the third party tenant as possible. As such, in order to allow for the Landlords to end the tenancy with a third party tenant in accordance with section 47(1)(k) of the *Act*, I find the earliest an Order of Possession may be granted to this Tenant is May 1, 2016.

The Tenant has been issued an Order of Possession effective **May 1, 2016 after service upon the Landlord**. In the event that the Landlord does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

If the Tenant fails to serve the Order of Possession upon the Landlord prior to March 31, 2016, his tenancy for unit 315 will be considered ended, pursuant to section 62 of the *Act*.

In addition, once the Tenant serves the Order of Possession the Landlords are at liberty to make alternate living arrangements for the third party tenant. Such arrangements could be allowing the third party tenant to move into unit 302 when the Tenant moves back into unit 315.

Although the Tenant's request for specific repairs to unit 315 was severed from this Decision, I find there was insufficient evidence to prove unit 315 could not be occupied while waiting for the Tenant's requests for repairs to be determined. I made this finding based on the evidence presented during this hearing relating to the repairs that were completed and the current condition of unit 315 as described by both parties.

As per the foregoing, if the Tenant serves the Landlord the Order of Possession, the Tenant will be required to commence payment of rent for unit 315 starting on May 1,

2016, the effective date of the Order of Possession. If the Tenant fails to commence the payment of rent for unit 315 on or before May 1, 2016, after service of the Order of Possession, the Landlord would be at liberty to issue a 10 Day Notice to end tenancy for unpaid rent.

Conclusion

The Tenant was successful with his application and the 1 Month Notice to end tenancy issued October 30, 2015 was cancelled. The Tenant was granted an Order of Possession effective **May 1, 2016**, after service upon the Landlord.

If the Tenant fails to serve the Order of Possession upon the Landlord prior to March 31, 2016, his tenancy for unit 315 will be considered ended, in accordance with the *Act*.

This decision is final, legally binding, and 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: March 18, 2016

Residential Tenancy Branch

