



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AZZIZMALCO HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, O, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;

The tenant and his advocate appeared in person at the Residential Tenancy Branch Office to participate in the hearing. The landlord and her witness appeared via conference call to participate in the hearing. The tenant stated that the landlord was served with the notice of hearing package by Canada Post Registered Mail. The landlord confirmed receipt of the package in this manner on July 7, 2016.

Both parties confirmed receipt of the submitted documentary evidence by the other party and that no issues were presented that would prevent them from properly responding to them. As such, I find that both parties were properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Preliminary Issue(s)

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for money

owed or compensation for damage or loss, for an order for the landlord to make repairs and for an order authorizing the tenant to reduce rent for repairs. The tenant confirmed in his direct testimony that these issues were unrelated to the request to cancel the 1 Month Notice. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for cause, I dismiss these sections of the tenant's claim with leave to reapply.

During the hearing the landlord failed to provide any evidence of extraordinary damage regarding the hardwood floors. This claim was disputed by the tenant. The landlord also failed to provide sufficient details of repairs not done by the tenant and instead referred to the tenant not "de-cluttering" the rental unit. As such, these portions of the landlord's reasons for cause were dismissed.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2004 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated August 24, 2004. The monthly rent was \$680.00 payable on the 1st day of each month and a security deposit of \$340.00 was paid on August 17, 2004.

Both parties agreed that on May 25, 2016, the landlord served the tenant with the 1 Month Notice dated May 25, 2016. The 1 Month Notice displays an effective end of tenancy date of June 30, 2016 and sets out 3 reasons for cause that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has caused extraordinary damage to the unit.
- the tenant has not done required repairs of damage to the unit/site.

The landlord provided affirmed testimony that the tenant has a compulsion to "hoard" due to his mental illness. The landlord stated that the tenant through his actions in

“hoarding” has become a health hazard and nuisance to the landlord and other occupants of the rental premises. The landlord stated that since 2008 the landlord has made efforts through cooperation with various organizations to keep the hoarding under control.

The landlord stated that in 2015 and 2016 several complaints were received from other tenants regarding a mice infestation. The landlord responded first having inspections made and then by contracting a pest control company to inspect the rental premises. The landlord stated that they provided regular maintenance and rodent control through a contracted pest control company. The landlord provided affirmed testimony that the tenant’s rental unit is considered the source location of the mice infestation. The tenant disputed this claim stating repeatedly that the rodents travel based on the holes and that he has many holes in his rental unit. The landlord relies upon a letter dated February 10, 2016 from the local municipal authority which states that an inspection was performed on February 3, 2016 in which it was determined, “the Property Use Inspector revealed that Unit No. 306 in the building at the above location is providing harborage for pests (mice)”. The landlord also relies upon an inspection report dated April 8, 2016 by a contracted pest control company which states that the highest activity level of mice in conjunction with the “major sanitation required” is the opinion of the service technician that the tenant’s rental unit is the source of the infestation. A review of the surrounding units shows low to medium activity of mice. The tenant has disputed that there is now “low mice activity” due to his ongoing efforts to deal with clutter. The landlord disputes this stating that there are still rodents present and that the only viable treatment available is “heat treatment” which is rendered useless considering the tenant’s clutter. The landlord seeks vacant possession in order to properly treat the rental premises.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence of both parties that the landlord served the tenant with the 1 Month Notice dated May 25, 2016 in person on May 25, 2016. I find that the tenant was properly served and is deemed to have been properly served on May 25, 2016 as per section 90 of the Act.

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord has provided independent confirmation that a rodent infestation has occurred and that the rental premises is the source location of mice in the building. The pest control technician's

opinion that due to the high activity level in the rental unit that is considered the source location for the rodents. I accept that the tenant has made efforts to comply with the landlord's repeated requests to "de-clutter", however it is clear based upon the landlord's undisputed evidence that the rental unit in the opinion of the pest control technician is still a source location for the mice infestation. The tenant's efforts were unfortunately insufficient. I find that the landlord has established that the tenant has seriously jeopardized the health or safety of the landlord and the other occupants of the rental property. The landlord's 1 Month Notice dated May 25, 2016 is upheld. The tenant's application to cancel the 1 Month Notice is dismissed. Pursuant to section 55 of the Act the landlord is granted an order of possession.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

The landlord is granted an order of possession.

The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: July 18, 2016

Residential Tenancy Branch