



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant CC ("the tenant") and Tenant PC were both present. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover their filing fee for this application from the landlord?

Background and Evidence

This tenancy began on October 8, 2013 with a rental amount of \$1700.00 payable on the first of each month. The landlord testified that she continues to hold a security deposit in the amount of \$850.00 paid by the tenants at the outset of the tenancy.

The landlord entered into written evidence a copy of a 1 Month Notice to End Tenancy for Cause. In that Notice, requiring the tenants to end this tenancy by June 30, 2016, the landlord cited the following reasons for the issuance of the Notice:

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 caused extraordinary damage to the unit/site or property/park.

Tenant has assigned or sublet the rental unit/site without landlord's written consent and

Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the security and pet damage deposit are not issues that require further consideration. The landlord provided sworn undisputed testimony that the tenants have rented out the basement suite that is within her unit without approval. The landlord testified that the tenants also have an excessive amount of possessions within the rental unit.

The landlord testified that, within the rental unit, the tenants have full boxes covering most of the floor space in the unit. She testified that one stack of boxes in the bathroom blocks access to the toilet and that, when the toilet hose broke, the plumber was unable to access the damaged area or repair the leak. She testified that, as a result of the stacks of boxes, the air cannot properly circulate within the rental unit that the walls have developed rot and rats are infesting the rental unit. The landlord testified that there is also a substantial amount of trash within the rental unit contributing to the unsanitary conditions.

The landlord testified that the furnace and hot water tank do not properly run inside the rental unit and that they cannot be accessed to be repaired. She testified that, on May 29, 2016, she entered the rental unit to inspect. She testified that, at that time she verbally requested that the tenants clean inside the rental unit and that she remove items from the porch attached to the rental unit. The landlord testified that the porch is also stacked with the tenants' possessions and that the porch is in jeopardy of collapsing.

The landlord testified that the tenants were confrontational and argumentative when asked to clean up the unit. Following the May 29, 2016 visit, the landlord provided a checklist with deadlines for work to be done by the tenants inside and on the porch of the rental unit. The landlord submitted a copy of the checklist as evidence for this hearing. The landlord testified, among other verbal requests and written notes to the tenants, that on June 28, 2016, she provided a further note to the tenants indicating areas that must be cleared for safety.

The tenant testified that the landlord did not inspect the rental unit prior to purchasing the property in May 2016. The tenant testified that she was already residing in the unit and that she continues to work slowly on the house/rental unit. She testified that she has not finished unpacking, that everything takes time and that she is using the back porch to restore furniture that she acquires online.

The landlord responded that the tenants did not allow access to the rental unit prior to May 29, 2016. The landlord submitted email correspondence with the previous owner that indicates the tenants were asked to clean up the property several times. The landlord submitted photographic evidence showing the state of the property including; substantial debris in the yard (large items – broken furniture, bicycles, metal, toilet, etc.); damage to the porch; interior damage requiring repair (unsecure light switches, unfinished walls and door frames); and a laundry room with 3 floor to ceiling stacks of boxes and additional storage items.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden shifts to the landlord to justify the end of the tenancy. Pursuant to section 47 of the *Act*, the landlord sought to end the tenancy for cause on several grounds including that the tenants have;

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- put the landlord's property at significant risk.

The landlord must prove, on a balance of probabilities that the cause they have provided to end tenancy is valid and justified. In this matter, the landlord has supplied sworn testimony, documentary and photographic evidence in support of their application.

With respect to the sworn evidence, the landlord testified in a clear and direct manner. Her testimony was internally consistent and supported by both documentary and photographic evidence. I accept the landlord's testimony that, from the day that she first viewed the rental unit, the amount of personal belongings in the tenants' rental unit was excessive. I accept the landlord's testimony, undisputed on this point and supported by documentary evidence that the tenants had been cautioned on more than one occasion to reduce the amount of belongings on the property within a reasonable period of time. I accept the landlord's testimony that the tenants have not taken sufficient steps to reduce the amount of items in their home.

I also accept the photographic evidence of the landlord as a reasonable representation of the state of the residential premises. The photographic evidence provided by the landlord of both the inside and outside of the residence is compelling with respect to her claims of safety concerns. I accept the landlord's submission that a reasonable person would infer that health and safety hazards exist within the rental unit. Furthermore, I find that the landlord has proven the tenants' actions (in acquiring and maintaining this amount of belongings) have created this hazard.

I find that the landlord has shown, on a balance of probabilities that the tenants have seriously jeopardized the health or safety or lawful right or interest of the landlord and put the landlord's property at significant risk. Therefore, with respect to the tenants' application to cancel the Notice to End Tenancy, that application is dismissed.

Pursuant to section 55(1) of the Act, if a tenant makes an application disputing a landlord's notice to end tenancy and that application is dismissed, the Arbitrator must grant the landlord an Order of Possession. Based on my dismissal of the tenants' application, I grant the landlord an Order of Possession.

Conclusion

I dismiss the tenants' application in its entirety.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 12, 2016

Residential Tenancy Branch