



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and more time to make the application. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

In filing the Application, the tenant indicated that he had received the 1 Month Notice on May 31, 2016. The 1 Month Notice has an effective date of June 30, 2016. I noted that the tenant's application had been submitted at a Service BC office on July 8, 2016, several weeks after the 1 Month Notice was received, but that the tenant had requested an extension.

Section 66 of the Act permits me to grant an extension in "exceptional circumstances". Upon hearing from the parties I determined the following information. The tenant had originally submitted an Application for Dispute Resolution on June 3, 2016 to dispute the 1 Month Notice at a Service BC office; that Application was received and processed by the Residential Tenancy Branch and a hearing was set for July 7, 2016 (file number provided on cover page of this decision). The Service BC office reported to the Residential Tenancy Branch that the tenant did not pick up the hearing package; the case was set to "abandoned" and an Arbitrator was not assigned to the July 7, 2016 hearing. However, the tenant had actually picked up the hearing package, served it upon the landlord and the parties called into the July 7, 2016 hearing but an Arbitrator did not. The landlord testified that they reported this to the Branch; however, the Branch's records do not reflect such a call. The tenant attended the Service BC office again on July 8, 2016 and provided another copy of the Application he had originally filed on June 3, 2016. The staff at Service BC submitted it to the Residential Tenancy Branch indicating the tenant was seeking several remedies, including: a correction; a

new application and re-submitting an application. Rather than instruct the tenant that the appropriate course of action would be to file an Application for Review Consideration, the Branch processed the tenant's submission as a new application and assigned it a new file number and issued a Notice of Hearing for a hearing scheduled for August 25, 2016.

Although section 66 of the Act provides that I may provide an extension of time in "exception circumstances", and I am satisfied that "exceptional circumstances" apply in this case, section 66 also provides that I must not grant an extension of time beyond the effective date of the Notice to End Tenancy. I am of the view that an administrative error was made in giving the first hearing package to the tenant and reporting to the Branch that the tenant had not picked it up. Then, the error was compounded when the tenant's submission of July 8, 2016 was processed as a new application rather than taking steps to correct the earlier error. I find that to deny hearing the tenant's application due to compounding errors on part of the government would bring the administration of justice into disrepute. Accordingly, I informed the parties at the hearing that I would hear the merits of this case. The landlord expressed dissatisfaction that so much time has elapsed between the time the 1 Month Notice was served and the date of this hearing but indicated that the landlord was prepared to present its case in support of eviction so as to bring this matter to resolution. Therefore, I proceeded to hear from both parties as to whether the 1 Month Notice should be upheld or cancelled based on the merits of the case.

Of further note is that the name of the landlord was amended, with consent of the parties, to include the legal name of the landlord.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause of May 31, 2016 be upheld or cancelled?

Background and Evidence

The tenancy commenced in August 2013. The tenant is required to pay rent of \$765.00 on the first day of every month. At the start of this tenancy the rental unit was in new condition and the tenant was the first occupant of this unit.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on May 31, 2016 (the Notice). The Notice indicates the following reasons for ending the tenancy:

- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Below, I have summarized the landlord's reasons for eviction that were provided during the hearing and the tenant's responses.

1. Extraordinary damage

The landlord submitted that the tenant has caused approximately \$10,000 in damage to the rental unit due to his collection of used cigarette butts, empty cans and bottles, and other items collected from the community and that the smell and filth that accompanies the collection of these items. The landlord submitted that there is an overwhelming stench of cigarettes in the rental unit, which can be smelled in the common hallway as well, and the rental unit is filthy with dirt, hair and grime. The landlord submitted that the stench has permeated cabinets, walls and flooring and that these items will need to be replaced and/or sealed. I heard that the filth even extends approximately five feet outside of the rental unit door into the common hallway. The landlord submitted that the property is a non-smoking property and that multiple requests have been made for the tenant to clean the unit. Further, the tenant's collection of stuff includes prohibited items such as propane bottles.

The building manager testified that he inspected the rental unit May 11, 2016 and during that inspection the building manager verbally instructed the tenant that he had to clean up the unit. On May 14, 2016 the building manager issued a written notice for the tenant to clean up the unit by May 19, 2016. The landlord returned to inspect the unit on May 19, 2016 and found little to no improvement. The landlord provided photographs taken May 14, 2016 and May 19, 2016 and pointed out that the photographs do not provide for the pungent smell.

The tenant responded by stating that the photographs merely depict a unit that needs some housekeeping. The tenant claimed that he has been working to clean up the unit since May 19, 2016 and that it is in better condition than that seen in the May 19, 2016 photographs.

The tenant's advocate submitted that the tenant is in need of community support and that he has a cleaner come once per week but that he should have a cleaner come more often. The advocate suggested that they may be able to obtain more frequent cleaning services.

The tenant's advocate acknowledged that the tenant is a "collector" and attributed the accumulation of belongings against the wall in the rental unit to not enough cupboard and storage space in the rental unit.

The building manager did not dispute that the tenant is likely in need of more supports but pointed out that the landlord does not operate supportive housing and that this situation is over-whelming for the landlord and staff. The building manager testified that he opened the door to the rental unit approximately one week before this hearing, to inspect for an emergency repair, and noticed that it is in the same poor condition.

2. Tenant has not done required repairs

The landlord explained that this reason is connected with the reasons provided above and refers to the tenant not cleaning the rental unit. Accordingly, I have not repeated the reasons and responses already provided above.

3. Breach of material term

The landlord submitted that the tenant has breached the term in the tenancy agreement that prohibits smoking anywhere on the property. The landlord stated that the tenant smokes outside the front doors of the building. The landlord submitted that several verbal conversations and written notices have been given to the tenant with respect to smoking outside of the building yet he continues to do so.

The tenant submitted that he smokes on the City sidewalk and not the landlord's property.

The landlord acknowledged that the tenant smokes on the City sidewalk and pointed out that under the CRD clean air bylaw smoking must not take place within a certain distance of doors and windows and that smoking on the City sidewalk violates that by-law given the close proximity of the sidewalk to the front of the building.

During the hearing, the parties were asked to provide input as to the effective date of an Order of Possession should the landlord succeed in this matter. The landlord requested

an Order of Possession effective two to three weeks after service. The tenant's advocate requested a month to vacate.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on a Notice a tenancy may be ended where one of the reasons is sufficiently supported.

As for smoking outside of the building, it would appear that the landlord is attempting to enforce a CRD by-law and not a breach of the tenancy agreement. In any event, the landlord did not produce a copy of the tenancy agreement for my consideration. Accordingly, I have not considered the reason "breach of a material term of the tenancy agreement" further.

As for the level of cleanliness and damage to the rental unit, I provide the following findings and reasons.

Under section 32 of the Act, a tenant has certain obligations to repair and maintain the property. Below, I have reproduced the relevant portions:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Upon review of the photographs provided by the landlord I find that the tenant has failed to maintain a reasonable level of cleanliness and sanitary standards throughout the rental unit. It was also undisputed that the building manager instructed the tenant to clean up following an inspection held on May 11, 2016 and upon review of the photographs taken on May 19, 2016 I accept the landlord's position that the tenant's efforts were woefully inadequate.

The Act does not define the term "extraordinary damage" and I interpret the words using their ordinary meaning.

Extraordinary means, among other things, something that is beyond what is usual, ordinary, regular, or established. Damage means, among other things, to harm or to spoil.

I find the landlord's position that a lack of cleanliness and sanitary standards, especially breaking apart numerous discarded cigarette butts, and collecting and storing of cans and bottles and other discarded items from the community, has the propensity to result in a stench if the tenant is not especially careful or diligent in handling of these items. I also accept the landlord's argument that a pungent stench has resulted in extraordinary damage since a number of components of the rental unit will require replacement or sealing as being within reason. Further, I accept that replacement and/or sealing of cabinets, walls and flooring is costly. Therefore, I find the tenant's actions resulted in damage to the property and that this type of damage is extraordinary.

I have also considered that during the hearing the tenant appeared to minimize the impact his actions have had upon the landlord's property. For instance, the tenant was of the position that some housework is required in the rental unit; and did not appear to appreciate that the state of his rental unit is not ordinary or within reasonable.

However, perhaps more concerning in this case is that a significant amount of time has elapsed since the tenant was put on notice to clean up the unit and been served an eviction notice; yet, the additional cleaning supports referred to by the advocate have not yet been brought in.

In light of all of the above, I find landlord has satisfied me that the tenant's actions have caused extraordinary damage to the rental unit. Therefore, I uphold the Notice and dismiss the tenant's request that I cancel it.

Section 55 of the Act provides that I must provide the landlord an Order of Possession in the following circumstances:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) The landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) The director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 1 Month Notice, I am satisfied that it meets the form and content requirements of the Act. Having upheld the Notice and dismissed the tenant's application, I am satisfied that the criteria of section 55(1) have been met and I provide the landlord an Order of possession with this decision.

Upon consideration of the requests of both parties during the hearing, I provide the landlord with an Order of Possession effective three weeks (21 days) after service upon the tenant.

Conclusion

The 1 Month Notice dated May 31, 2016 has been upheld and the tenant's application has been dismissed.

The landlord has been provided an Order of Possession effective 3 weeks (21 days) after service upon the tenant.

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: August 30, 2016

Residential Tenancy Branch