



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Burnaby Lougheed Lions Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her two advocates; and the landlord's agent.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The parties agreed the tenancy began in October, 2000 as a month to month tenancy for the current monthly rent of \$674.00 due on the 1st of each month with a security deposit of \$465.00 paid.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on July 27, 2016 with an effective vacancy date of August 31, 2016 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health, safety, or lawful right of another occupant or the landlord and put the landlord's property at significant risk; and the tenant has caused extraordinary damage to the unit/site or property park.

The landlord submitted that on July 23, 2016 there was a fire in the rental unit. The tenant testified that, as she understood it, her son had a candle burning near a window; that he had thought he had put out but the curtains caught fire.

The parties agreed that since the fire the tenant has not been living in the rental unit. The landlord submitted that he believed the tenancy was frustrated because of the damage to the unit. He described that condition as follows: the tenant's son's bedroom was completely gutted; the firefighters had to break through the tenant's bedroom wall; there is smoke and water damage into the hallway and downstairs. He stated that, at the date of this hearing the power is still off in the unit.

He stated that although they had begun restoration work it has been stopped by their insurance company who will not proceed with work until the tenant removes her belongings. He stated that despite times being arranged twice for the tenant to come and remove her belongings and put them into storage she has failed to show up.

The tenant submitted that the landlord should not be able to end the tenancy because it was an accidental fire and it was not intentionally caused by her son. The tenant stated that since the fire she had been staying with her mother and now is in a shelter with her son.

The tenant and her advocate both testified that they had tried to schedule a time with the landlord but that both times she had scheduled she ended up being hospitalized and could not remove her belongings. They also stated that on one occasion that they did return the found her unit unsecured and was concerned that anyone could access her personal belongings.

Analysis

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;

- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Residential Tenancy Policy Guideline #34 states a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into.

When parties enter into a tenancy agreement, by law, each party becomes obligated to fulfil certain conditions in accordance with both their tenancy agreement and the *Act*. Specifically, Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Based on the testimony of both parties, I find that the fire caused sufficient damage to the rental unit that made it impossible for the landlord to fulfil their obligations under Section 32(1) of the *Act*.

However, from the tenant's testimony the fire was caused, accidentally, by her son's actions. As such, I find the tenancy has not ended by being frustrated.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has 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 or the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property.

I find, from the testimony of both parties, that the fire caused significant damage to the rental unit. Further, from the landlord's testimony I accept the rental unit is currently uninhabitable. As a result, I find the fire has caused significant damage to the residential property.

While the tenant submitted that the fire was not set intentionally, I find the fire was caused by the actions of her son. As a result, pursuant to Section 47, I find the landlord has established cause to end this tenancy.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 27, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: September 26, 2016

Residential Tenancy Branch