



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SURREY VILLAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; an other remedy under the Act; 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. 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? Is either party entitled to recover their filing fee?

Background and Evidence

This tenancy began on November 1, 2015 as a fixed term until October 31, 2016. The rental amount of \$925.00 is payable on the first of each month. The landlord continues to hold a \$465.00 security deposit paid by the tenant at the outset of the tenancy.

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

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord...*

Tenant has caused extraordinary damage to the unit/site ...

Tenant has not done required repairs of damage to the unit...

Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that there is a foul odour coming from the tenant's rental unit. The landlord testified that the odour has become bothersome to the other tenants as well as the staff working at the residential premises. She testified that the tenant's rental unit is located on the main floor and therefore prospective tenants are exposed to the odour as well.

The landlord provided as documentary evidence a variety of letters from the landlord to the tenant providing options for the tenant in assisting to address the smell as well as the mess in his rental unit. The landlord provided a list of tenants who have complained about the smell from the tenant's unit. The landlord testified that she has spoken with the tenant on more than a dozen occasions regarding the smell in his rental unit.

The landlord also testified that, during the past several months, she has documented the problems with the tenant. She submitted copies of letters from the landlord to the tenant including,

- March 11 and 13, 2016: notice to inspect because of foul smell
- April 18, 2016: notice that, during inspection, found unit needs cleaning
- May 4, 2016: notice re: complaints about smell
- May 9, 2016: notice to follow-up on request to clean because of smell
- June 15, 2016: notice to inspect unit (re: bad smell)
- July 12, 2016: notice to inspect unit (re: bad smell)
- July 14, 2016: notice that there is strong smell of garbage and cat urine/feces from the unit – given time period to clean
- July 29, 2016: notice to inspect unit.

The landlord submitted photographs of the rental unit taken during a recent inspection of the unit. They included photographs of a very unclean toilet; an overflowing refrigerator; a living area with the carpet covered in a variety of household items; kitchen counters covered with a variety of items and garbage; an abundance of furniture filling the rental unit; a very full cat litter box; and a very dirty carpet where it can be seen. The property manager also testified on behalf of the landlord. He testified that recently, he attempted to conduct a scheduled inspection of the rental unit but that he could not get in the door because there were many items blocking the door. The landlord testified that a fire inspection is scheduled as she is concerned about the amount of items accumulated in the tenant's rental unit leading to a fire.

The landlord submitted a card with a file number from animal protection. The property manager testified that animal protection eventually removed the tenant's cat from his residence stating that the conditions were not fit for the cat. The tenant confirmed that his cat had been removed but suggested there were other health related reasons for the removal.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. Based on the landlord's evidence submitted after this hearing, there may be an end to this tenancy if the premises are in fact closed. However, the landlord issued a 1 Month Notice to End Tenancy on August 2, 2016. At that time, the landlord relied on the following grounds;

- *Tenant has engaged in illegal activity that has, or is likely to:*
 - *damage the landlord's property;*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *Tenant has caused extraordinary damage to the unit/site or property/park.*
- *Tenant has not done required repairs of damage to the unit...*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The term "illegal activity" refers to a serious violation of federal, provincial or municipal law. Illegal activity may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. The party alleging the illegal activity has the burden of proving that the alleged activity was illegal.

I find that the landlord provided insufficient evidence that the tenant has engaged in any form of illegal activity. There was no documentary evidence submitted with respect to this ground to end a tenancy. Given that the landlord has not met the burden of proof with respect to illegal activity, I will not consider this ground of the notice to end tenancy any further.

I find that the rights and obligations of a landlord and tenant, as described in the Residential Tenancy Act, create certain terms that are material to a tenancy. Section 32 of the Act provides the landlord and tenant obligations regarding repairs and maintains the rental property,

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (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.

I find that the tenant has failed to conduct required repairs of damage to the unit by way of the variety of notices provided to the tenant requesting that he clean the rental unit and address the foul smell from his residence.

I also find that the tenant has breached a material term of his tenancy by failing to maintain reasonable health, cleanliness and sanitary standards throughout his rental unit.

I accept the testimony of the landlord supported by her witness, documentary evidence and photographic evidence to show that the tenant has failed to maintain appropriate standards of cleanliness in his rental unit. I find that the landlord has provided the tenant with several opportunities over a substantial period of time to clean his residence and address the odour. The tenant has not done so.

Given my finding with respect to the condition of the unit and the tenant's obligation under the Act, I will not consider the ground to end tenancy of "extraordinary damage to the rental unit".

I am satisfied that the landlord has shown sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice however the tenant has been unsuccessful in that application. In accordance with section 55(1)(b), I must grant the landlord an Order of Possession given that I have upheld the Notice to End Tenancy. The landlord is entitled to an Order of Possession.

As the landlord was successful in her application, I find that the landlord is entitled to recover the filing fee for this application by retaining \$100.00 from the tenant's \$465.00 security deposit.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective October 31, 2016. 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.

The landlord is permitted to retain \$100.00 from the tenant's \$465.00 security deposit thereby reducing the tenant's security deposit to \$365.00.

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: October 7, 2016

Residential Tenancy Branch