



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNION GOSPEL (HEATLEY) HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- cancellation of the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice"); and
- an Order that the landlord comply with the *Act*, regulations or the tenancy agreement.

Both the landlord's agent ("landlord") and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. The landlord appeared with four witnesses, Witness C.D., Witness S.F., Witness S.P. and Witness S.C., who all gave affirmed testimony. The witnesses were excluded prior to giving their testimony. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

- Should the landlord's One Month Notice be cancelled?

Background and Evidence

The landlord's testimony established that a month to month tenancy started January 18, 2011 pursuant to a written tenancy agreement that was signed on January 18, 2011. A copy of the tenancy agreement was not submitted. The tenant believes he moved into the unit in October 2010.

On November 8, 2016, the landlord served the tenant with a One Month Notice dated November 3, 2016 by posting a copy on the door of his unit. The effective move out

date on the One Month Notice was December 31, 2016. The tenant acknowledged receipt of the One Month Notice on November 8, 2016.

The landlord's stated reasons for ending the tenancy set out on the One Month Notice is as follows:

The 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.

The landlord testified that in late March 2016 the tenant dumped approximately 24 large garbage bags full of garbage outside the building on the street in an area that was not designated for garbage. The tenant was identified by the landlord on a security camera. The tenant acknowledged having dumped the garbage bags. The landlord submitted a photo of the bags of garbage left by the tenant. The photo was taken on November 22, 2016 by Witness S.P.

The landlord testified that the amount of garbage that was removed from the tenant's rental unit as shown in the photograph was a concern so the landlord performed an inspection of the unit on April 4, 2016. As a result of the inspection, the landlord discovered that the unit was in need of major cleaning and that there was an infestation of cockroaches. The landlord submitted various photographs showing cockroaches, both dead and alive, throughout the tenant's unit including in the fridge and freezer.

The landlord testified that the tenant was asked to clean up his unit so that the cockroach infestation could be treated by a pest control company. The landlord testified that the pest control company attended but the worker advised him that it would be a waste of time to treat the unit as it wasn't sufficiently clean enough. The landlord testified that the pest control worker advised him that the dirt and food product in the unit would compete with the cockroach bait.

The landlord testified that the tenant was notified by letter dated April 5, 2016 that the condition of his unit prevented the landlord from treating the cockroach infestation and requested the tenant to clean the unit. The landlord testified that further follow up inspections were done with the last inspection occurring on November 22, 2016. The landlord testified that the tenant's unit was still in need of major cleaning preventing treatment of the cockroach infestation.

Witness C.D. testified that the tenant had asked him four or five months ago to help him clean his unit. The witness testified that the infestation was so bad that he couldn't handle the job and that it was akin to a hazmat situation. The witness described seeing a loaf of moldy bread stuck to the kitchen floor. The witness also described having seen a migration of cockroaches coming out from under the tenant's door around the time that the tenant dumped the garbage. The witness did not recall the tenant coming to him to report the problem. The witness testified that it was the garbage dumping incident that initiated the inspections leading to the discovery of the infestation in the tenant's unit.

Witness S.C. testified that she had inspected the tenant's unit on four occasions and her description of the condition of the unit was consistent with that of the landlord and other witnesses. This witness also testified that the tenant had not made any progress with respect to cleaning up his unit.

Witness S.F. testified that he has fielded many complaints from his workers about the condition of the unit and that there are maintenance workers who refuse to enter the unit due to its condition.

The tenant did not dispute that his unit needs a major cleaning. The tenant testified that due to health reasons he is not able to do the clean up on his own and needs help. The tenant testified that he had asked the landlord to allow him to use his damage deposit to pay someone to help him clean up the unit and that he would repay the damage deposit in monthly installments. The tenant testified that there is no major cockroach infestation although the tenant acknowledged that it was a problem. The tenant testified that the photos are "fake" and that they make the unit look worse than it really is.

The tenant testified that he first noticed the cockroaches in November 2015 and that he reported the problem to the landlord at that time. The tenant testified that he was told that he is on his own and so he purchased some spray. The tenant testified that the landlord did not take any steps to resolve the problem when the tenant notified the landlord about it.

The tenant acknowledged having left twenty garbage bags next to the building. The tenant stated that the garbage bags were filled mostly with his personal items and not all food.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 32 of the *Act* requires the tenant to maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit and property. I find that the condition of the tenant's unit falls below this standard which has interfered with the landlord's efforts at treating a major cockroach infestation. I make this determination taking into account the condition of the unit as testified to by the landlord and witnesses and as depicted in the photographs taken on November 22, 2016, both of which I find are reliable.

While the tenant and the landlord disagree as to when and how the cockroach problem came to the attention of the landlord, the undisputed evidence establishes that the landlord has been trying to get the tenant to clean up his unit since at least April 5, 2016 so that the infestation can be treated. The tenant has acknowledged that his unit needs a major clean up and that he has not been able to accomplish this. Accordingly, I accept the evidence of the landlord that he has not been able to treat the cockroach infestation due to the condition of the tenant's unit.

Based upon the foregoing, I find that there is sufficient evidence that the tenant has:

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

Accordingly, I dismiss the tenant's application to cancel the One Month Notice and I uphold the Notice ending the tenancy.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s.55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with s.52 of the *Act*.

I find that the landlord's One Month Notice complies with s.52 of the *Act*. As a result, I find the landlord is entitled to an order of possession effective two days after service of the Order.

I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulations or the tenancy agreement as there was no evidence given nor any submissions made by the tenant in this regard.

Conclusion

I dismiss the tenant's application and I uphold the One Month Notice to end the tenancy.

Pursuant to s.55 of the *Act*, I grant an Order of Possession to the landlord **effective two days after service of this Order** on the tenant. Should the tenant 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 final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 04, 2017

Residential Tenancy Branch