



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANSPACIFIC REALTY ADVISORS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC RP

Introduction:

Both parties with many witnesses attended the hearing. The tenant applies to cancel a Notice to End the Tenancy for cause dated November 17, 2016 to be effective December 31, 2016 and to obtain an Order to repair the property. I find that the Notice to End a Residential Tenancy was served by personally on November 17, 2016 and the landlord admitted service of the application for dispute resolution by registered mail from the tenant which was filed on November 30, 2016.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties and many witnesses attended the hearing and were given reasonable opportunity to be heard, to provide evidence and to make submissions. It is undisputed that the tenancy began on June 1, 2001, the current rent is \$814 plus \$10 for gas a month and the tenant paid a security deposit of \$325.12. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- b) The tenant has caused extraordinary damage to the unit or property
- c) The 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 said the tenant has caused extraordinary damage to the bathroom floor due to continuous urine spilling onto the floor and it not being cleaned up and disinfected in a timely manner. They claim the unit is not being maintained in reasonable health, cleanliness and sanitary conditions and this poses a health risk to other tenants in the building as well as significant deterioration of the unit's bathroom floor. As evidence they provided a plumber's report regarding a repair visit made on February 2, 2016 to address a leaky toilet complaint from the tenant. The report said the toilet was not leaking but there was an 'overwhelming stench of urine', there was an abundance of water on the floor which was urine and it was pooling and covering the majority of the bathroom floor surrounding the toilet. The building manager gave

evidence that she attended with the plumber and that he did not want to deal with it as the floor was saturated and it was a health hazard. The property manager persuaded him to do what was necessary to protect himself such as using protective clothing. He bleached the floor, installed a new seal and toilet(although he said the toilet was not leaking) and left the bathroom spotless. Shortly after, while attending another unit, he realized he left a tool behind. He went back and was shocked to see a pool of urine again on the floor.

One of the tenant's workers said that they had hired another plumber who said on December 10, 2016 there might be a faulty seal and some nuts under the vanity were leaking. The building manager said she was present and their plumber said in her hearing that the smell and stickiness showed it was a urine issue and wall damage was caused by it. The worker agreed that their plumber had said that although he also tightened some nuts under the vanity. The tenant's representative said that the tenant had complained in January 2016 that there was a problem with the linoleum on the bathroom floor but it was never done. He said it likely was older damage and in any case, since then more support workers and cleaners are involved. The landlord said that even with some extra help in November 2016, there was further pooling urine. She said that the tenant's plumber said there was no point in replacing anything until the problem was solved.

The landlord said that this is a serious issue that will cost \$22,500 for a restoration company to restore the bathroom. The tenants' workers were shocked at the cost and believed a bathroom should not cost that much to renovate. The landlord provided a detailed estimate from the restoration company illustrating the amount of work that would have to be done and the safety equipment necessary as urine is considered a health hazard. Also this is an older building and they might need to do some abatement to deal with it.

The landlord also provided a letter from a neighbour who said she was concerned for safety as the tenant frequently burns food on the stove and wafts the smoke into the hallway. This has set off the fire alarms and she is concerned the tenant may not be able to deal with something burning in a timely way as he has some mobility problems.

The tenant gave some evidence also. He said the building manager was paranoid about urine due to her family background. He said he agreed he would move into a hotel while repairs were done but did not get a response. He agrees his smoke alarm goes off but says others do too and there was a fire in the building in the past. He said he did call in one false alarm but he paid for it. He said there is no smell of urine, it is cleaned once a month for two hours and the stain at the back of the toilet is black, not

brown like urine. He said he is a good neighbour and thinks it is unreasonable to evict him.

The tenant's workers agree that he does not qualify yet for assisted living. They have had ongoing discussions with the landlord as evidenced by the many emails in evidence. In evidence are also plumbers' reports, many photographs showing the condition of the bathroom in January, February, March and November 2016, the tenancy agreement and many reports from the tenant's workers and representatives.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes it. Although this tenant is elderly and a long term tenant since 2001, I find the weight of the evidence is that he is unable to manage his toileting in a hygienic fashion. Although the tenant denies the water on his bathroom floor is urine and a continuing problem, I find the weight of the evidence is that it is urine and it has persisted since at least February, 2016 when the landlord engaged a plumber to fix what the tenant claimed was a leaking toilet. The tenant's workers have been communicating with the landlord consistently and trying to assist him but I find the weight of the evidence is that this has not been sufficient to curb the ongoing toileting problem that is destroying the suite bathroom and causing a health hazard in the building. I find the plumbers' reports and the many photographs support the landlord's evidence. The landlord considered the lack of cleanliness was a material breach of the tenancy agreement and advised the tenant by letter on February 9, 2016 and March 21, 2016 but the problem with the bathroom has not improved. I find the urine was still pooling in November 2016 even with extra supports being provided to the tenant. Furthermore, I find the tenant does not even recognize it is an issue since he claims there is no urine smell and the building manager is paranoid. He appeared to believe that two hours cleaning once a month is sufficient.

I find the weight of the evidence, then, is that the tenant has caused extraordinary damage to the landlord's property. The extraordinary nature is supported by the estimate from the Restoration company which estimated emergency repairs would cost \$7500 and reconstruction \$15,000 with asbestos testing and lead testing to be done. I find this one ground sufficient for ending the tenancy for cause pursuant to section 47 of the Act. As the landlord pointed out, it is their duty to protect the safety and quiet enjoyment of all tenants and this health hazard with the accompanying smell and fruit fly infestation is very disturbing to other tenants. I find the continuing damage is putting the landlord's property at significant risk as the evidence shows the urine appears to have penetrated the walls and is forming a constant pool on the bathroom floor.

Although the tenant also requested an order that the landlord make repairs to the bathroom, I find the weight of the evidence is that repairs are not recommended by the

professionals until the toileting problems of the tenant are resolved. I dismiss this portion of his application without leave to reapply.

The tenant also requested a delay of the hearing and an investigation by plumbers to determine that it was really urine on the bathroom floor as he does not believe it is. I find the weight of the evidence is that it has already been determined by professionals to be urine and it would be prejudicial to the landlord to deny the evidence already obtained to order another investigation to delay the hearing. I dismiss this request of the tenant. The tenant wanted to know his appeal options and I told him there was an option to have the Decision reviewed and if unsuccessful, for it to be appealed to the Supreme Court of BC.

I therefore dismiss the tenant's application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord has made this request at the hearing and with some reluctance agreed to an effective date of February 28, 2017 for the Order for Possession.

Conclusion:

I grant the landlord an Order for Possession effective February 28, 2017. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application. No filing fee was involved.

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: January 04, 2017

Residential Tenancy Branch