Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dreamz 100 Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, MNR, MNDC, FF

Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on December 21, 2016, compensation for the cost of emergency repairs and damage or loss under the Act, an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The tenant served the landlord with the hearing documents, sent via registered mail to the service address provided on the Notice ending tenancy. The landlord confirmed this was the correct address. The registered mail was sent on December 29, 2016. The landlord said the hearing documents were not received until January 16, 2016.

During the hearing the Canada Post tracking information was viewed and it was determined that someone at the landlords' place of business had signed accepting the mail on January 4, 2017. The landlord said it must have been his receptionist who accepted the mail. Therefore, as the documents were delivered in accordance with section 89 of the Act, to the landlords' place of business, I find that the hearing documents were given to the landlord effective January 4, 2017.

Section 3.14 of the Rules of Procedure provides:

> *3.14 Evidence not submitted at the time of Application for Dispute Resolution*
> *Documentary and digital evidence that is intended to be relied on at the hearing*

must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17

On January 9, 2017 the tenant sent 18 pages of evidence via registered mail to the landlords' service address. That evidence was delivered on January 12, 2017; 13 days before the hearing. Therefore, that evidence was set aside as it was not served in accordance with section 3.14 of the Rules.

Rule 3.15 requires the respondent to submit rebuttal evidence to the applicant and Residential Tenancy Branch (RTB) no later than 7 days prior to the hearing. The landlord served the tenant with 19 pages of evidence one day prior to the hearing. The tenant said she did not receive the digital evidence the landlord said was given to the tenant. As this evidence was not served at least seven days prior to the hearing I determined that the landlords' written submission would be set aside. I note that the landlord served the Residential Tenancy Branch with 22 pages and two DVD's on January 23, 2017. That evidence was not before me. The landlord said the digital evidence was given to the tenant; the tenant said it was not.

The hearing proceeded on oral submissions only.

Section 2.3 of the Rules of Procedure provides:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, as the matters outside of the Notice ending tenancy are not sufficiently related to whether the tenancy should end, I determined that only the Notice ending tenancy would be considered. The balance of the application is dismissed with leave to reapply.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on December 21, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The tenancy commenced on June 1, 2015. Rent is due on the first day of each month. The tenant pays $1,747.00 rent.

The tenant rents one of 36 units in a building heated by a boiler system and radiators.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on January 31, 2017.

The reasons stated for the Notice to End Tenancy were that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and
- put the landlord's property at significant risk.

On November 24, 2016 the landlord entered the rental unit to perform pest control. The door to the unit could not be fully opened. The landlord said that when you enter the home there is a living room and a short hallway to the bathroom and bedroom. There is an area of approximately 10 sq. feet that is clear but you cannot walk any further into the unit due to the piles of personal property the tenant has in the unit.

The living room was piled with items approximately four feet or more in height. The counters were covered with items. The microwave was full of items. There were items stored on top of the stove. There were clothes, containers, a table and chairs in the bathtub. The landlord said there was no clear path to the windows. The landlord said that approximately 80% of the floor was covered with property that was piled high. The landlord said you could not walk down the hall to enter the bedroom or bathroom as too many items were piled in the hall. The landlord said the tenant must have been able to somehow enter the bathroom by squeezing by boxes. The door to the bedroom could not be opened and items were piled everywhere in the bedroom. The heat radiators were covered with items.

On December 6, 2016 the landlord issued a letter to the tenant. The landlord entered the letter via oral testimony. The letter reminded the tenant that during the inspection that occurred on November 24, 2016 the landlord had discovered the unit to be in a state that presents a fire hazard and risk to health. The landlord explained they had contacted the fire department who would carry out an inspection. The landlord provided a copy of the fire department checklist for the tenant. The letter reminded the tenant that the rental unit must be maintained in a clean and sanitary condition or the tenancy could end. The tenant had signed a tenancy agreement agreeing to maintain reasonable health, cleanliness and sanitary conditions.

The landlord directed the tenant to clean the unit of excess belongings within 15 days, so that the tenant would be in compliance with the check-list standards issued by the fire department. The landlord offered assistance to the tenant. The letter indicated that an inspection would take place on December 21, 2016.

The landlord said that the fire department checklist required that items be cleared from entries and in the hallway; that items be removed from the stove and heaters, that paths of at least 30 inches be cleared and that items must not be piled over four feet in height, that there be paths around a bed and furniture and 30 inch paths to windows. The landlord said that the one item on the checklist that was in compliance was the presence of a functioning smoke detector. The tenant was to ensure compliance with these standards by December 21, 2016.

On November 30, 2016 the landlord sent photos of the unit to the fire department Special Hazards department. On December 2, 2016 a fire department staff member responded with the checklist and links that could be helpful with clearing clutter. The fire department rated the unit as nine out of a possible nine for risk. They classified the state of the unit as “hoarding, excessive/structural hazard.” The landlord read the email in as evidence.

When the landlord entered the unit on December 21, 2016 she acknowledged that the tenants’ door could now open all of the way. Nothing else had changed. The tenant said that 15 days had not given her enough time to comply. The landlord had offered the tenant use of the building garbage removal and recycling service, but the tenant had not used that.

The owner said they do not want to evict the tenant but must think of others in the building that are being placed at risk due to the tenants’ failure to ensure proper standards in the rental unit. The tenant stores items over the heat radiators and on top of the stove; which poses a fire risk. The blocked access to windows would impede fire fighters. The owner viewed the photographs of the unit taken by the agent. The owner described photos that showed a microwave full of items, boxes, books and chairs stacked on top of each other, a TV with items piled almost to the celling, a narrow pathway from the kitchen to a side window. The owner said the piles of items are four feet or higher. The sofa is piled with items; there is no space to sit down. The owner said when he first saw the photos he was shocked. The owner said it is a lot of trouble to evict a tenant, but they must do it.

The landlord said they are following the advice given by the fire department. Their first concern is for other occupants and the risk to the tenant. If there were a fire the fire fighters would have trouble rescuing the tenant.

The tenant responded that the landlords’ submissions were “90% false.” The tenant said the landlord told her that 80% of the furniture must be removed and that the fire department would decide. When the landlord came to inspect on December 21, 2016 the tenant expected the fire department would also attend. The landlord did not measure the walkways to ensure compliance with the 30 inch requirement.

The tenant said there are areas that need to be sprayed for pests. The tenant was also complimented that the entry to the unit was cleaned. The tenant said that items were piled up to allow the landlord access for pest control. The tenant stated the problem is completely fabricated and that there is no fire hazard, as the heat does not work. The

tenant does not know how the bathtub can cause a fire hazard; the tenant placed items in the tub to allow the landlord access under the sink. There are no chairs and a table in the tub. The tenant said the unit is neat and clean.

When the tenant received the December 6, 2016 letter she read it over as she wanted to be sure she could comply. The tenant made changes but the landlord refused to measure. When the landlord came to see the tenant on December 21, 2016 the landlord had the eviction Notice with her; ready to serve to the tenant.

The landlord responded that she could not measure pathways on December 21, 2016 as she could not access areas of the unit. The landlord took photos and video of the unit, but those were not submitted on time and cannot be viewed during the hearing.

The tenant objected to the fact the landlord took photos of the unit without her permission. The tenant said there is a natural displacement of items.

Analysis

The landlord has issued a one month Notice to end tenancy for cause, pursuant to section 47(e) of the Act. The tenant disputed the Notice within the required time limit, pursuant to section 47(4) of the Act.

When a tenant disputes a Notice ending tenancy the landlord has the burden of proving, on the balance of probabilities, the reasons given on a Notice.

From the evidence before me I can find no reason the tenancy must end as the result of interference or disturbance to another occupant or the landlord. There was no submission made by the landlord that could be conceived as interference or disturbance caused by the tenant.

I have then considered whether there is cause sufficient to end the tenant as the result of health, safety or a lawful interest of another occupant or the landlord and whether the property has been placed at significant risk.

I found the landlords' testimony credible, consistent, lacking malice and focused on the concerns that have been raised as a result of the described state of the tenants' rental unit. The landlord provided detailed descriptions of what was found in the unit on November 28, 2016. That description leaves me to conclude that the tenant had an excessive amount of belongings in the rental unit. I accept that personal property was piled high and that movement throughout the unit was difficult. I also accept, on the balance of probabilities, that the windows could not be easily accessed and that the heat radiators were covered with the tenants' personal property.

I find that when the landlord returned to the unit on December 21, 2016 the rental unit was in essentially the same state as it had been found on December 6, 2016. The tenant suggested that pathways had been created that met the fire department standard.

However, items continued to be piled on top of the heat radiators. I take note that any reasonable person would accept that placing piles of personal property on top of heat radiators could pose risk of fire.

I have rejected the tenants' submission that the piles of belongings are in place as a result of the need to treat for pests. A reasonable amount of belongings, moved to allow pest control, would not result in piles of four feet or more in height. The tenant did not deny that the bedroom door could not open; that items were piled on heat radiators or that you could not walk around the bed or sit on furniture due to the amount of personal property in the unit.

The tenant states that the landlord did not provide sufficient time to respond to the checklist issued by the fire department. This leads me to conclude that the tenant understood there was a need to comply with the suggested safety standards contained in that checklist. While the tenant states the landlords' submissions were false, I found the landlords' testimony credible.

I found the landlords' submission that they did not wish to end the tenancy believable. The landlord has given the tenant notice of the concerns, time to respond and the offer of garbage and recycling removal service. Even though the fire department did not attend at the unit with the landlord on December 21, 2016, I find the landlord has provided sufficient proof, on the balance of probabilities that the tenant has not properly responded by ensuring personal property was removed from the heat sources in the rental unit.

I have rejected the tenants' submission that the heat does work The tenant said that the absence of heat removes any concern caused by placing personal property on the heat radiators. The tenant provided no evidence in support of this allegation.

Based on the detailed description of the rental unit provided by the landlord and the absence of any significant change in the state of the unit between November 28 and December 21, 2016, I find that the landlord has proven on the balance of probabilities that the tenant has failed to ensure that personal property is moved from the heat radiators. As a result I find that the landlord has proven on the balance of probabilities that the tenant has placed the landlords' property at significant risk by failing to respond to concerns regarding the risk of fire.

The landlord has an obligation to ensure the safety not only of the tenant, but of the occupants who reside in the other 35 units in the building. The landlord has encouraged and directed the tenant to remove the items and gave the tenant 15 days to comply. When the tenant failed to clear areas in the rental unit so that windows could be accessed and the heaters left clear of personal property I find that the safety of other occupants of the building was placed at significant risk.

Therefore, I find that the tenants' application is dismissed and that the one month Notice ending tenancy for cause issued on December 21, 2016 is of full force and effect.

Section 55(1) of the Act provides:

> ***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.*

As the tenants' application is dismissed and the Notice complies with section 52 of the Act, I find that the landlord must be issued an order of possession.

The landlord has been granted an order of possession that is effective at **1:00 p.m. on January 31, 2017**. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The application to cancel the one month Notice ending tenancy issued on December 21, 2016 is dismissed. The balance of the application is dismissed with leave to reapply.

The landlord is entitled to an order of possession. The tenancy will end effective **January 31, 2017 at 1:00 p.m.**

This decision is final and binding 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 24, 2017

Residential Tenancy Branch