



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FRASERSIDE COMMUNITY SERVICES SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause dated and received May 25, 2017. The Notice claims that the tenants are hoarding and storing personal possession to the point that it is a fire hazard.

The landlord filed a package of 36 pages of evidence on June 21, 2017. It sent a copy of the material by regular mail to the tenants at the address provided by the tenants in the application. The tenants did not try to retrieve the material until July 2 and by that time the post office had returned the mail to its sender. I determined that the landlord's evidence had been mailed in accordance with s. 88 of the *Residential Tenancy Act* (the "Act") and the tenants were deemed to have received them.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the evidence presented during the hearing show that the Notice was given on proper grounds?

Background and Evidence

The rental unit is a two bedroom apartment in a converted, two floor motel. The tenancy started in July 2013. The monthly rent is currently \$570.00. The landlord holds a \$285.00 security deposit.

Ms. S.A. for the landlord testifies that the tenants are hoarding possessions to the extent that rooms are filled with goods. Windows cannot be reached. She says the tenants have been instructed to clean up but have refused to do so.

She refers to an inspection conducted by the fire department in September 2016 during which the inspector gave the tenants a verbal warning to reduce the content of the unit as it violated the fire code. They were directed to remove all belongings in front of the unit as well as to clear a path to exit areas. A follow up inspection was to be carried out.

The landlord's records show it conducted fire drills at the complex every month. Its report for October 13, 2016 shows that the tenants' rental unit remained unchanged; with no clear path to the smoke detector (for testing) or to bedrooms. Its report for October 19, 2016 shows that some small path had been made to the smoke detector but there was still no access to the kitchen or the bedrooms.

On April 12, 2017, the landlord conducted an emergency fire drill in the complex. The report from that drill shows that access to the detector in the rental unit was not possible due to the "hoarding."

On May 17, 2017 another fire drill was performed. Again, landlord staff was unable to gain access to the smoke detector and confirm that it was in good order because there was "no clear path" to it in the rental unit.

Ms. S.A. adduced a number of photographs of the inside of the rental unit, taken over periods of time since July 2014.

Mr. D.L. for the landlord testifies that the tenants have failed a number of fire inspections and have been given verbal warnings. He acknowledges the fire department was there only the once; back in September 2016. He says that at the May 2017 inspection his staff could not walk through the front door due to boxes and pails stored there. It is not apparent that he himself was there at that time.

The tenant Mr. McN. testifies that the rental unit has been greatly improved since the tenants received the Notice. He says the fire inspector never returned after the visit of last fall and that he had not received any warnings until then.

He says that the landlord's agent Mr. M. attended and indicated the rental unit was clean and that there was no problem.

The tenant Ms. M.E. testifies that every month someone from the landlord's staff comes into the rental unit and pushes the button on the smoke detector. She can hear the detector make a sound. She says that therefore they always have room to get to the detector. She disputes the landlord's claim that there is no pathway to the front door.

Analysis

The ending of a tenancy is a very serious matter. A landlord seeking to evict a tenant from his or her home for cause will be required to provide clear and cogent evidence showing a violation of one of the grounds in s. 47 of the *Act*.

At the same time, a landlord has a duty to protect and keep safe the people in a rental complex such as this one. Monitoring the state of the premises for fire safety falls within that duty. A tenant living in close quarters with other occupants has an obligation not only to the landlord but to those others, to keep his or her rental unit safe.

The photos presented do not persuade me that the tenants are creating any fire hazard by keeping or storing of articles outside, in front of their door. There are two or three bicycles and some plants, chairs and plant holders. For the most part they appear to be located under set of wooden stairs. The picture shows what is not an uncommon site on anyone's urban back porch.

The older interior photos presented tell a different story. In 2014, 2015 and 2016 the tenants were collecting and storing their belongings to the extent that they almost completely filled a bedroom up to the front of its door. The entire floor of one room appears to be covered in plastic bins and other items. Boxes are piled up the ceiling against some walls.

However, photos taken in March 2017 show a reduction in the amount of items. The photo of the living room show a clear path around a coffee table and chair, with various

of the belongings hanging from walls. A photo taken in May 2017, looking into the bedroom, show there is access all the way to the window.

Ms. S.A. says one of the photos, looking into the kitchen shows it is completely blocked off by items on the floor, but I don't consider that to be convincing evidence. The photo is equivocal in my opinion and may just not be at an angle to show access. Ms. S.A. did not purport to have been in the rental unit herself.

The evidence presented raises significant concerns that the obvious hoarding activity by the tenants threatening their safety and the safety of others in the building. However, on the competing evidence it is not clear what the true state of the premises was at the time of the May 17 inspection. There is substantive evidence to indicate that the required laneways were there, as demanded.

Additionally, the state of the rental unit has changed since the last time a fire inspector was there. It was declared a fire hazard then and whether it remained so when the May 17 inspection was conducted is a key question. Arbitrators have no expertise in such matters and neither do either of the landlord's representatives. The lack of some current, concrete opinion from the fire department, declaring the state of a rental unit to be a fire hazard mitigates against such a finding.

The landlord also argued the state of the premises was unsanitary. While there was little evidence to support that claim, I decline to consider it. The details set out by the landlord in its Notice to End Tenancy refer only to a fire hazard.

Conclusion

The tenants' application is allowed. The Notice to End Tenancy dated May 25, 2017 is hereby set aside.

The tenants are cautioned that this decision is not a permit for them to continue their hoarding activity. This decision is not a finding that the state of the tenants' rental unit is not a fire hazard; only that it has not been proved on a balance of probabilities that it was a fire hazard as of May 25. The landlord is free to issue further Notices based on the condition of the premises after the May 25 Notice. Should the landlord do so the question of whether or not the state of the rental unit poses a fire hazard will be considered afresh.

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: July 21, 2017

Residential Tenancy Branch