



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF OPC CNC LRE MNDC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The corporate landlord applied for:

- an Order of Possession pursuant to section 47 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a cancellation of the landlord's 1 Month Notice to end tenancy for Cause, pursuant to section 47 of the *Act*;
- a monetary order for money owed under the *Act* pursuant to section 67; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit pursuant to section 70 of the *Act*.

Only representatives for the corporate landlord attended the hearing. Building manager, A.R. (the "landlord") was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord provided undisputed testimony that she served the tenant with a 1 Month Notice to End Tenancy for Cause by having placed it in the tenant's mailbox on June 9, 2017. Pursuant to sections 88 and 90 of the *Act*, the tenant is deemed served with the 1 Month Notice on June 14, 2017.

The landlord provided undisputed testimony that she received a copy of the tenant's Application for Dispute Resolution in person on June 19, 2017. On June 28, 2017 the

landlord sent the tenant a copy of the Landlord's application for dispute resolution and a copy of her evidentiary package by way of Canada Post Registered Mail. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant is deemed served with these documents on July 3, 2017.

Issue(s) to be Decided

Can the tenant cancel the landlord's 1 Month Notice? If not, is the landlord entitled to an Order of Possession?

Should conditions be set on the landlord's right to enter the unit?

Is the tenant entitled to a Monetary Order?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony was provided by the landlord that this tenancy began on October 1, 2012. Rent was \$975.00 per month and a security deposit of \$487.50 continues to be held by the landlord. The landlord explained that she served the tenant with a 1 Month Notice to End Tenancy for Cause because of the tenant's repeated failure to clean her apartment following numerous warnings.

On June 9, 2017, the tenant was served with a 1 Month Notice to End Tenancy. On this notice, the landlord cited the following reasons for its issuance:

- The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- The tenant has put the landlord's property at significant risk
- The tenant has damaged the landlord's property
- The tenant has caused extraordinary damage to the unit.

During the course of the hearing, the landlord stated that safety issues with the tenant's rental unit were identified to her as early as October 2016. The landlord noted that on October 19, 2016 the chimney technician who had been hired by the landlord could not enter the apartment due to the large amount of debris that was blocking the hallway. Following this incident, the tenant was provided with a written warning to clean her apartment.

The landlord continued by explaining that in April 2017 the fire inspector warned the building manager that the tenant's balcony was overloaded, and that it contained numerous prohibited items. On May 1, 2017 the landlord provided the tenant with a written warning to clean the balcony and to remove the various items which were prohibited by the fire inspector. After the tenant failed to do this, the landlord explained that she personally met with the tenant to emphasize the seriousness of the situation to the tenant.

On June 1, 2017 the landlord attempted to perform an annual suite inspection. Again, due to a large amount of debris present in the rental unit, the landlord could not enter the suite as the entranceway was blocked by a scooter and various boxes. In addition, the landlord explained that various other items present in the unit presented a great danger to the tenant as all exit and entrance points were blocked.

Following the June 1, 2017 the landlord provided the tenant with a written warning that she had 8 days to clean her apartment. On June 9, 2017 the landlord again attempted to inspect the rental unit; however, she explained that she was once again prevented from doing so, due to the large amount of garbage and debris present in the rental unit. Photographs displaying garbage piles along with a large amount of debris were provided at the hearing, as part of the landlord's evidentiary package.

In addition to the inspections by the landlord on June 1st and 9th, 2017, a pest control company was called to the apartment on June 9, 2017. The company attended the property at the request of the landlord, following complaints from an upstairs neighbour who had found cockroaches in his apartment. Again, due to the large amount of debris in the tenant's rental unit, the pest control company was unable to probably check for infestation.

After having served the tenant with a 1 Month Notice to End Tenancy, the property's health and safety manager wrote to the tenant on June 22, 2017 with specific concerns regarding hazards that have been identified in the rental unit. This letter explained that there are several contraventions to the fire safety code and several health and safety issues. Following receipt of this letter, the landlord explained that the tenant took no steps to rectify the dangers in her apartment and excessive clutter and extreme mess continue to be present in the unit and on the balcony.

Analysis

The landlord has applied for an Order of Possession, based on a 1 Month Notice to End Tenancy for Cause. The landlord has alleged that the tenant's actions have caused considerable damage to the rental unit and pose a danger to the property and to the other residents of the building. When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice and the end of tenancy based on the grounds supplied. In this case, I must examine whether the tenant has seriously jeopardized the health or safety or a lawful right or interest of another occupant.

Residential Tenancy Policy Guideline #1 explains that, "The tenant must maintain *reasonable health, cleanliness and sanitary standards* throughout the rental unit." I find that tenant has failed to maintain the rental unit in a reasonable manner despite numerous written warnings from the landlord. The tenant has been provided with written warnings on October 2016, May 2017 and three times in June 2017. No evidence was presented at the hearing by the tenant to dispute the findings of these written warnings. Photographic evidence, along with undisputed testimony submitted at the hearing demonstrate that a series of hazards exist in the rental unit and that no changes have occurred despite the landlord's repeated attempts to have the tenant rectify her living situation.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (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.*

Based on the 1 Month Notice entered into written evidence and the landlord's sworn testimony describing the document served on the tenant, I find that the landlord's 1 Month Notice complies with section 52 of the *Act* and that the landlord is entitled to an Order of Possession based on the effective date of the 1 Month Notice, in this case, July 31, 2017. As this date has passed and the tenant continues to occupy the rental unit, the landlord will be provided with a 2 day Order of Possession which must be served on the tenant.

As the landlord was successful in her application, she may pursuant to section 72 of the *Act*, retain \$100.00 from the tenant's security deposit in satisfaction for a return of the filing fee.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord may retain \$100.00 from the tenant's security deposit in satisfaction for a return of the filing fee.

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: August 15, 2017

Residential Tenancy Branch