



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M.R.B. Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and provided affirmed testimony. All parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party raised any issues with respect to service of the Notice of Hearing, or the documentary evidence each party was relying upon during the hearing. The landlord provided an evidence package, along with digital evidence (photos, audio), and the tenants confirmed they received it and had a chance to see it.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Are the tenants entitled to have the landlord's 1-Month Notice to End Tenancy for Cause cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Documentary evidence from the landlord shows that the tenancy began on June 1, 2015, as per the tenancy agreement. Rent in the amount of \$850.00 is due on the first day of each month. The tenants paid a security deposit of \$425.00 to the landlord.

The landlord issued the 1-month Notice to End Tenancy for Cause (the 1-month Notice) for the following reasons:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Under the "Details of Cause" section, the landlord specified that the tenant had significantly damaged the refrigerator ("huge dents" on the door). During the hearing, the landlord testified that there have been issues in the past with the refrigerator in the rental unit and they have been diligent with fixing it. The landlord further stated that the refrigerator had been working fine for several months, leading up to the most recent incident in August of 2017.

The landlord stated that on August 15 or 16, 2017, the tenant came to the manager's office in the building to report that the refrigerator was leaking again and demanded a replacement. The landlord testified that the manager sent building maintenance staff to the unit to assess the refrigerator. Upon attending the unit to determine what the problem was with the refrigerator, the maintenance person found large dents on the door, and stated that it looked like a hammer or a bat had been taken to the front.

The landlord testified that on August 17, 2017, they replaced the refrigerator and on the same day, they issued the 1-month Notice based on the excessive damage the tenant caused. The landlord further testified that she hand delivered the 1-Month Notice to both tenants on August 17, 2017, with an effective date of September 30, 2017.

The landlord provided photos of the damage to the front of the refrigerator. The photos reveal that there were multiple, large dents on the refrigerator door. The landlord also provided a copy of the Condition Inspection Report (prior to moving in), which the tenants both signed. This report shows that the refrigerator was in good condition with the exception of a rust spot on the back of the unit.

In the hearing, the male tenant acknowledged that he caused the damage to the refrigerator and offered to pay for it. The tenant stated that he doesn't know why he should have to move out if he has offered to pay for the damage. The tenant opined that the landlord should have billed them for the damage, rather than evict them.

Analysis

Although the landlord issued the 1-month Notice under 3 different grounds, I turn to the following ground for my determination on this matter: the “tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.”

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

I find that the refrigerator was in good condition, with the exception of the rust spot on the back, at the time the tenants moved into the unit, as per the Condition Inspection Report. I turn to the following section of the *Act*:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(f) the tenant or a person permitted on the residential property by the tenant has caused **extraordinary damage** to a rental unit or residential property;

Next, I turn the following definition of “extraordinary” from Black’s Law Dictionary:

EXTRAORDINARY - Out of the ordinary; exceeding the usual, average, or normal measure or degree.

Given the substantial dents shown in the photos, and the acknowledgement from the male tenant that he caused the damage to the refrigerator, as depicted, I find the male tenant directly caused extraordinary damage to the landlord’s property. While I acknowledge that the refrigerator had issues in the past, and may have required some maintenance, this does not excuse the excessive damage caused by the tenant. Although the tenants would have preferred to be billed for the damage, rather than have the tenancy end, I find the landlord had sufficient cause to issue the 1-month Notice, due to the damage caused. The Tenant’s application to cancel the 1-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant’s application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 1-month Notice complies with the requirements of form and content. The landlord is entitled to an order of possession, based on the effective date of the 1-Month Notice, September 30, 2017.

As the tenants were not successful with their application, I dismiss their claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause dated August 17, 2017, is dismissed. Further, I dismiss the tenant's request to recover the cost of the filing fee.

The landlord is granted an order of possession effective September 30, 2017, after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: September 21, 2017

Residential Tenancy Branch