



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

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

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on August 12, 2017. Both parties also confirmed that the landlord received the tenant's documentary evidence package and that the landlord served the tenant with his documentary evidence package via Canada Post Registered Mail on October 12, 2017. I accept the undisputed evidence of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2014 on a fixed term tenancy ending on January 30, 2015 and then thereafter on a month-to-month basis as per a signed tenancy agreement dated July 10, 2014. The monthly rent was \$975.00 payable on the 1st day of each month. A security deposit of \$487.50 was paid.

Both parties agreed that on July 31, 2017, the landlord served the tenant with the 1 Month Notice dated July 31, 2017. The 1 Month Notice sets out an effective end of tenancy date of September 1, 2017 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk.

Listed on the details of cause(s):

13/10/15- Fire Damage (attached) due to the unattended food left in a oven

20/09/16- Fine Due to the illegal activity and abusive behavior towards other building occupants (attached)

Water Damage 25/05/2017

Refusal to obtain Tenant's Insurance

More attached

The landlord claims that he has received numerous complaints about the tenant smoking marijuana and excessive loud music. The landlord also referred to a fire accident which caused damage caused on October 13, 2015 in which the tenant left the stove unattended. The landlord also claims that there have been multiple bylaw violations by the tenant in which the Strata have imposed fines upon the landlord.

The landlord stated that the reason the 1 month notice dated July 31, 2017 was issued because of water damage caused by the tenant. The landlord clarified that in May 2017 the tenant was negligent and caused water to overflow causing damage to the flooring next to the bathtub. The landlord has referred to the invoice dated May 26, 2017 from a restoration company which noted that the cause of damage in a lower floor unit was caused from water dripping from the tenant's rental unit "due to overflowing bathtub". The landlord claims that the tenant was negligent in her due care and attention to water dripping from the bathtub to the floor which caused water damage to the unit below.

The tenant has provided both verbal testimony and written submission stating:

my landlord is accusing me of misusing appliances causing them to be replaced. There was a leak in our bathroom on two different occasions in the past three years that he is now trying to claim is my responsibility to pay the bill for. False accusations have been made against me for smoking marijuana on my balcony. My landlord is also saying I refuse to get renters insurance even though it was never requested on the lease that I have renters insurance. My landlord also illegally increased my rent once, and tried to do it again on May of 2017.
[reproduced as written]

The tenant also provided affirmed testimony that there was no actual water leaking, but that there was water flowing from the use of the shower to the floor which would enter the sealant between the bathtub and the flooring. The tenant acknowledged that water was leaking from this area to the unit below. The tenant argued that the report from the restoration company agrees that she was not negligent.

The landlord has submitted in support of his claims:

- A copy of an invoice dated May 26, 2017 for water damage restoration.
- A copy of an email from the Strata President, re: receiving complaints about the tenant.
- A copy of an unknown text message, re: complaint from another occupant.
- A copy of a photograph, re: appears to be burnt embers and a cigarette butt.

The landlord clarified that after the fire incident in 2015, the landlord felt that this was an accident and that no further action was required. The landlord also clarified that no actual fines have been imposed by the strata, but that multiple complaints have been filed with the strata by other occupants of the rental building over loud music and the smoking of marijuana.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the evidence of both parties and find that the following listed reasons for cause by the landlord have failed.

13/10/15- Fire Damage (attached) due to the unattended food left in a oven

On this claim, I find that the landlord had admitted that this was an accident and that no action was required at the time as such. The legal principle of laches is based on the concept that equity aids the vigilant and not those who slumber on their rights. In this case, I find that the landlord ought to have diligently asserted his right or claim by making an application for dispute resolution (issue a 1 month notice) during the tenancy to address this issue. In failing to make an application at or near to the time the problem arose, the landlord did not allow the tenant to respond effectively to the landlord's claims. On the basis of laches, I dismiss the landlord's reason for cause of fire damage caused approximately 2 years prior to the issuance of the 1 Month Notice dated July 31, 2017.

20/09/16- Fine Due to the illegal activity and abusive behavior towards other building occupants (attached)

As provided by the landlord's direct testimony, the landlord stated that no such fines were issued by the strata for any bylaw infractions caused by the tenant. As such, this portion of the landlord's reason for cause is dismissed.

Water Damage 25/05/2017

The landlord has provided undisputed evidence that water damage had occurred due to water leaking through the sealant between the bathtub and the floor. This was confirmed by the tenant's direct testimony and the landlord's documentary evidence (restoration company invoice dated May 26, 2017) and the tenant's documentary evidence (restoration company updated report dated July 27, 2017) which states in part that water damage was caused by "Water dripping down from bathroom in \$411, due to leak from around tub while showering". I find that although not malicious the tenant was negligent in her due care and attention when using the bathtub. It cannot be said that the tenant would not understand that the constant use and the flow of water leaking over the side of the bathtub would not cause damage. As such, I find that the landlord has been successful in this reason for cause noted on the 1 Month Notice dated July 31, 2017.

Refusal to obtain Tenant's Insurance

On this reason for cause, I find that the landlord has failed. The tenant has provided undisputed evidence that there were no provisions as a part of the signed tenancy agreement requiring the tenant to obtain insurance. In any event, this term if included could constitute an unconscionable term as it is not material to the tenancy agreement.

As the landlord has provided sufficient evidence for at least one of the reasons listed for cause, the 1 Month Notice dated July 31, 2017 is upheld. The tenant's application to cancel the 1 Month Notice is dismissed.

Pursuant to section 55 of the Act, the landlord is granted an order of possession. As the effective date of the 1 Month Notice has passed, the order of possession shall be effective 2 days after service upon the tenant.

Conclusion

The tenant's application is dismissed.
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and 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: October 31, 2017

Residential Tenancy Branch