



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (the "application") under the *Residential Tenancy Act* (the "Act") to cancel a 1 Month Notice to End Tenancy for Cause dated August 14, 2017, the ("1 Month Notice").

The tenant, a tenant advocate, an agent for the landlord (the "agent"), and a resident manager for the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony evidence and to make submissions to me. Only the evidence relevant to this decision is described below.

The parties confirmed that they received documentary evidence from the other party prior to the hearing and that they had the opportunity to review that evidence. I find the parties were sufficiently served in accordance with the *Act*.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on October 1, 2012 and reverted to a month to month tenancy after September 30, 2013.

The tenant confirmed that she was served with the 1 Month Notice dated August 14, 2017 but does not recall the specific date she was served but did confirm that she

received the 1 Month Notice by mail. The tenant disputed the 1 Month Notice on August 23, 2017 which is within the 10 day timeline provided under section 47 of the Act. The landlord listed two causes on the 1 Month Notice, namely:

1. The tenant or a person permitted on the property by the tenant has put the property at significant risk.
2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.

The agent testified that on April 27, 2017 the landlord wrote a warning letter to the tenant regarding smoke coming from her unit which led to the discovery of a smoldering fire in her bathroom garbage can after the smoke alarm was not turning off in the tenant's rental unit. The tenant testified that due to her hearing, she is unable to hear a smoke alarm unless she is near the alarm even with a hearing aid to assist her. A copy of the warning letter was submitted in evidence. The agent then testified that in response to that warning letter she wrote a letter dated May 2, 2017 requesting that the warning letter be revoked, which the landlords refused to do and in that letter stated that the following:

“...Also the water that overflowed was caused by a dripping tap, I wasn't aware that the tap was dripping so it must have just started dripped that day.”

[Reproduced as written]

The resident manager then testified that on August 10, 2017 she witnessed water coming out from under the door of the tenant so entered the rental unit after the tenant did not answer the door. The resident manager stated that she saw water coming out of the kitchen faucet full blast and was flowing fast and overflowing the kitchen sink and that inside the sink were dishes. The resident manager stated that after she shut off the water she found the tenant on her couch smoking a cigarette. The resident manager stated that the next day on August 11, 2017, water was again seen coming out from under the door of the tenant's rental unit and after 10-15 minutes of knocking, the tenant opened the door and water was again seen overflowing the kitchen sink with the faucet flowing fast with water, at which time the tenant then went to turn off the kitchen sink faucet.

The agent then testified that since serving the tenant with the 1 Month Notice, the tenant had another flood in her unit on September 20, 2017 which was the same cause, an overflowing kitchen sink that was not turned off by the tenant. Documentary evidence was submitted in support of these incidents.

The tenant confirmed that on August 10, 2017 her kitchen sink overflowed and stated that she could not recall it happening again on August 11, 2017.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant disputed the 1 Month Notice within the 10 day timeline provided for under the *Act* the onus of proof then reverts to the landlord to prove that the 1 Month Notice is valid. The landlord is only required to prove one of the listed causes for the 1 Month Notice to be valid.

In the matter before me, I find the testimony of the agent and resident manager and supporting documentary evidence to be consistent and compelling. On the contrary, I find the tenant's testimony to inconsistent and vague. For example, the tenant claims her overflowing water was caused by a dripping tap that must have occurred that day and that she could not recall whether her water overflowed again on August 11, 2017 after confirming that the sink overflowed on August 10, 2017. Therefore, I prefer the testimony of the agent and resident manager over that of the tenant as a result. I also find it more likely than not that the overflowing water in May 2017 was the result of more than a dripping faucet and was likely the same cause as August 10th, 11th and 20th of 2017 which was the tenant leaving her kitchen sink faucet on full and forgetting to turn it off.

Given the above, I dismiss the tenant's application to cancel the 1 Month Notice as I find the 1 Month Notice is valid and that the landlord has provided sufficient evidence to prove the first ground on the 1 Month Notice. In addition, I do not find it necessary to consider the second ground as a result.

As the agent confirmed that the tenant has paid for use and occupancy for the month of November 2017, taking into account that the effective vacancy date listed on the 1 Month Notice was September 30, 2017, and as a result and pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **November 30, 2017 at 1:00 p.m.**

Conclusion

The tenant's application is dismissed.

I uphold the 1 Month Notice issued by the landlord. The tenancy ended on September 30, 2017 which is the effective vacancy date listed on the 1 Month Notice.

The landlord has been granted an order of possession effective November 30, 2017 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: November 15, 2017

Residential Tenancy Branch