



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIBRO HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LAT, LRE, OLC, PSF

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 change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

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 and the submitted documentary evidence. The landlord also confirmed that no documentary evidence was submitted by the respondent. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset, the tenant clarified that he was only seeking an order to cancel the 1 Month Notice and a request for repairs: oven, fridge and shower. Both parties acknowledged and confirmed the issues of the tenant's application for dispute.

Issue(s) to be Decided

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

Is the tenant entitled to an order for repairs?

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.

Neither party provided any particulars of the tenancy.

The tenant seeks an order cancelling the 1 Month Notice dated November 17, 2017.

Both parties confirmed that on November 17, 2017, the landlord served the tenant with the 1 Month Notice by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of November 20, 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; or
- the tenant has caused extraordinary damage to the unit.

No details of cause were provided on the 1 Month Notice, but the landlord provided with the Notice a letter dated November 9, 2017 from the landlord, re: to comply with the Residential Act, Regulation, or term of our tenancy agreement. Smoking Bylaw, smoking is not permitted in the building. All tenants have entitlement to quiet enjoyment of premises, please refrain from screaming and yelling. The letter also refers to the tenancy agreement not allowing for additional occupants in the premises.

It was clarified with both parties that a 1 Month Notice served on November 17, 2017 would be deemed served on November 20, 2017 as per section 90 of the Act. Both parties were informed that such service would automatically correct the landlord's 1 Month Notice to be effective on December 31, 2017 as opposed to the provided date of November 20, 2017.

The tenant requested that the landlord make repairs to the oven, fridge and shower. The tenant stated that the landlord was notified of these issues, but has not made any repairs. The landlord disputes this stating that no notification was made over the oven, but has agreed that the landlord can attend with a licensed professional to inspect and repair the oven. The landlord also claims that an inspection was made on the stove and shower, that 1 cooking element was not working, but that the tenant had refused access

to repair it. The landlord also stated that an inspection of the shower fixture was made and that it was found to be functioning properly. The tenant clarified that the issue was for the shower “surround” as it was loose and needed to be re-fixed in place. The landlord agreed to have a licensed professional attend to inspect and repair the shower “surround” as required. Both parties confirmed that the landlord and tenant were willing to have the stove element repaired. As such, the landlord shall have a licensed professional attend after proper notice given by the landlord to attend and repair the stove element.

On the landlord’s reason for cause as listed on the 1 Month Notice, the landlord has cancelled the 3rd reason, the tenant has caused extraordinary damage to the unit. The landlord has provided details on the first two reasons.

The landlord claims that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord by banging on the ceiling of the rental unit causing a disturbance to the unit directly above on a daily basis. The landlord also claims that the tenant is verbally abusing other tenants. The tenant disputes these claims stating that the banging on the ceiling occurred only once and has not been repeated since. The tenant argues that he has never verbally abused any other tenants.

The landlord claims that the tenant has been smoking in his rental unit contrary to a no smoking condition agreed to in the addendum to the tenancy agreement. The tenant confirmed in his direct testimony that there was a no smoking condition as part of an addendum to the tenancy agreement. The tenant also confirmed that he did smoke in the rental unit, but has since stopped and has made an effort to smoke outside of the rental property. The landlord argued that the tenant was given previous cautions and warnings to not smoke in the rental unit.

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.

In this case, both parties have confirmed that the landlord served the tenant with the 1 Month Notice dated November 17, 2017. Both parties also confirmed that the tenant was previously cautioned and warned that smoking in the rental premises could impact his tenancy. Both parties confirmed that a no smoking condition was part of an addendum to the tenancy agreement. On this basis, I find that the landlord has

established a claim for cause as the tenant was smoking in the rental unit contrary to a no smoking condition. The 1 Month Notice dated November 17, 2017 is upheld. The tenant's application to cancel the 1 Month Notice is dismissed.

Conclusion

Both parties confirmed that the landlord shall have a licensed professional attend after proper notice is given under the Act to repair the oven.

Both parties confirmed that the landlord shall have a licensed professional attend after proper notice is given under the Act to repair the stove cooking element.

Both parties confirmed that the landlord shall have a licensed professional attend after proper notice is given under the Act to repair the shower "surround".

The tenant's application to cancel the 1 Month Notice is dismissed. The 1 Month Notice dated November 17, 2017 is upheld. Pursuant to section 55 of the Act, the landlord is granted an order of possession effective two days after service.

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: February 08, 2018

Residential Tenancy Branch