



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Baltic Title Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC ERP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 28, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each other's documentary evidence package. I find all documentary evidence was exchanged in accordance with the rules of procedure and will be considered in this review.

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

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord issued the Notice for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Put the landlord's property at significant risk.

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site.

The Tenant acknowledged receipt of the Notice on November 24, 2017.

In the hearing, the Landlord explained that there were several issues and reasons why they want the tenancy to end. The Landlord stated that there is a bedbug problem in the building and the Tenant's failure to properly prepare his unit before the scheduled treatments has impacted the efficacy of these treatments, which impacts other tenants as well. The Landlord explained that there have been 11 different bedbug treatments and each time, the Tenant failed to properly prepare his unit. The Landlord provided copies of the reports from the pest management company to support this.

The Tenant stated that he has had to throw some of his furniture out because of the bedbugs and he does not feel the bedbugs are from him. The Tenant stated that he

wants the bedbugs gone as well and he keeps his place very clean. The Tenant stated that the pest management employee never really told him what he wasn't doing properly in preparation for the treatments.

The Landlord also stated that the Tenant is smoking in the rental unit despite signing a tenancy agreement which specifies no smoking (provided into evidence). The Landlord stated that they first noticed the Tenant was smoking in his unit when they did an annual inspection around September of 2016. The Landlord provided a copy of a letter from this time which was written warning to the Tenant that he was not to smoke anymore.

The Landlord also stated that they did an inspection in the fall of 2017 and further evidence of smoking was found. The Landlord stated that they issued a second formal letter to the Tenant at this time saying that there were new cigarette burns in the hardwood flooring of the living room. The Landlord stated that this is a major fire hazard, as there are many burn marks, indicating it is not an isolated incident. The Landlord provided photos into evidence, which they took during the annual inspection, and it shows cigarette burn marks on the Tenant's couch, and on the floor near the couch. The Landlord also provided a photo of a cigarette ashtray beside the Tenant's chair.

The Tenant stated that the Landlord knew that he smoked at the time he moved in and the Landlord accepted it. The Tenant stated that there is no way to know how many of the burn marks indicated in the photo of his living room are from him, and how many were from previous tenants. The Tenant stated that the building is at least 50 years old and the floors are not in very good shape.

The Landlord stated that the burns were not there prior to the Tenant moving in, and this was noted in the condition inspection report.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord has issued the Notice under multiple grounds. However, I first turn to the following grounds:

Tenant or a person permitted on the property by the tenant has:

- put the landlord's property at significant risk.

I note the Landlord has concerns about the Tenant's smoking and the risk this poses to the building, including to other occupants. The Tenant acknowledges he smokes but stated that there is no way to know how many of the burn marks are from him.

I acknowledge that there are no photos of the initial condition of the rental unit to show whether or not there were burn marks already present. However, the Landlord stated that there were no burn marks at all on the floor and this was noted in the condition inspection report. I note that in the photos from the Landlord, there is evidence that smoking is occurring in the rental unit; there is a cigarette ashtray on the table, and burn marks on both the surface of the Tenant's couch, and on the floor near the couch. I note these burn marks closely resemble the shape of a cigarette and are distinguishable from other wear and tear. Based on a balance of probabilities, I find it more likely than not that the Tenant has been smoking in his unit, and it appears he has allowed a lit cigarette to drop, without picking it up on multiple occasions. I find the Tenant's smoking poses a serious fire hazard to the building, and has put the Landlord's property at significant risk.

Based on these reasons, I find the Landlord had sufficient grounds to issue the Notice.

Having made this finding, it is not necessary to consider the remaining grounds indicated on the Notice. The Tenant's application to cancel the 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 Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession for the end of March 2018, given rent has already been paid up until this point.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed.

The Landlord is granted an order of possession effective **March 31, 2018, at 1pm**, 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: March 5, 2018

Residential Tenancy Branch