



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

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 the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

The Tenant and the Landlord both 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. Both parties were informed that the hearing was their opportunity to present their arguments and point me to any supporting and relevant documentary evidence in their submissions.

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.

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?
- Is the Tenant entitled to recover the filing fee for his application?

Background and Evidence

The Landlord issued the Notice, on December 14, 2017, for the following reasons:

Tenant has allowed an unreasonable number of occupants in the unit/site.

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

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- put the landlord's property at significant risk.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The Tenant stated that this is the 4th arbitration hearing he has had with this Landlord and she has been found to have acted in bad faith when issuing previous Notices. The Tenant stated that this Notice is no different because the next day after finding out she was unsuccessful with her previous Notice to End Tenancy hearing, she issued a new Notice to him. The Tenant stated that the Landlord has gone to extreme lengths to fabricate scenarios to make it look like he is at fault.

The Tenant stated that his living situation is as follows:

- he has a verbal tenancy agreement with the Landlord to rent half of a two bedroom suite
- the main entry to the suite has its own lock (a non-functional deadbolt and a door knob lock)
- the deadbolt lock does not and has never worked, and he uses the door knob lock
- each of the bedrooms within the 2 bedroom suite also lock separately with distinct keys
- he only rents one of the rooms, and currently pays \$550.00 per month
- he does not have a key to the second bedroom
- the second bedroom used to be rented out to another person, who moved out at the end of August 2017

- he has never had access to the second bedroom
- the Landlord rents out both of the rooms, individually, fully furnished
- the total square footage of the suite is around 400, and it is quite small

The Landlord stated that she noticed a light on in the second bedroom of the suite sometime in December 2017. The Landlord stated that this concerned her because there was not supposed to be anyone staying in that room, as it was not rented out. The Landlord alleges that the Tenant changed the deadbolt lock into the main suite, without giving her access and also somehow gained access to the second bedroom, which was supposed to be locked. The Landlord provided a photo of a deadbolt lock and a letter written by her and signed by the locksmith stating that her original key did not fit in the lock, which is why the lock needed to be changed. The Landlord stated that because she could not properly operate the deadbolt lock into the suite, this posed a safety hazard because the electrical panel and hot water tank are located in there. Towards the end of the hearing, the Landlord stated that she has now changed the deadbolt locks and she had a locksmith come by to sort out the issues.

The Tenant stated that the deadbolt lock has always been broken, and was that way when he moved in. He stated that he usually only uses the lock on the door knob, and he denies the allegations that he changed the locks on this door, or any door in the suite. The Tenant stated that at one point, he tried to fix the deadbolt, but only so he could use it from the inside while he was home to keep the Landlord from illegally entering. The Tenant stated that he never had the ability to lock it from the outside because it was broken.

The Tenant stated that his son has stayed with him for a while in the fall of 2017 because of some family issues but that his son left for a period of time. The Tenant stated that he has a second bed set up because his son is now living with him again. The Landlord provided a photo of the bed which shows that the bed is pushed up against a baseboard heater, and that there are some clothes adjacent to the heater. The Landlord stated that this it is not reasonable to have another bed set up in such a small space and it poses a fire hazard. The Landlord stated that the Tenant is only renting one bedroom in a two bedroom suite, and the common living area is shared with whoever rents the second bedroom. The Landlord stated that it is too small in there for two grown people to live in, and the suite is small enough that it is not reasonable to have two adults sleeping in different beds.

The Landlord stated that when the tenant of the 2nd bedroom moved out, she did a move out inspection in September 2017 sometime and noticed that the bed was messy (it was a furnished room), and there were signs it had been lived in. She provided a

photo she took of the room. The Landlord suspected that the Tenant's son had broken into the second room, without her consent, and was living in there. The Tenant stated this is not possible because his son didn't come to stay with him until November sometime, and he also never had access to the second locked bedroom. The Landlord feels the Tenant's living situation is unsafe, and the space he is renting is not intended for another person.

Analysis

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

I note that there has been a significant degradation in the relationship between the Tenant and the Landlord. Both parties have provided conflicting testimony on many of the points and largely disagree on the reasons behind the Notice. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the burden of proof is on the Landlord to support the reasons in the Notice. The Tenant denies almost all of the allegations from the Landlord and ultimately, some of these issues are difficult to resolve without further documentary evidence and testimony. Although many of the grounds listed on the Notice would require more evidence from the Landlord in order to substantiate that they are enough to end the tenancy, I find there is sufficient evidence to end the tenancy on the following ground:

- Tenant has allowed an unreasonable number of occupants in the unit/site

In making this determination, I have considered that the Tenant only rents one half of a small basement suite (around 400 square feet). The Tenant also shares a significant portion of his square footage (shared kitchen, living room etc.) with whoever rents the second bedroom. The tenancy agreement was for the rental of one [lockable] bedroom in a two bedroom suite, and to share the common areas (kitchen, living room, washroom) of the suite with the tenant of the second room. The Tenant acknowledges that his son stayed with him during the fall of 2017, then lived elsewhere for a period of time. The Tenant also acknowledged that his son is now living with him again and he has another bed set up on the floor, in addition to the bed included with his initial rental of the single furnished bedroom. After considering the totality of the circumstances, including the size of the suite, and the nature of the tenancy, I find it is not reasonable for the Tenant to set up an additional bed and have an additional occupant. Further, it

appears that one of the beds has been placed right next to a baseboard heater, which poses a fire hazard, and is not appropriate given the size and layout of the rental unit.

I find the landlord had sufficient cause to issue 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.

As the tenant was not successful with his application, I dismiss his 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 December 14, 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 March 31, 2018, 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