



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, OLC, MNDC

Introduction

On February 14, 2018, the Tenant submitted an Application for Dispute Resolution under the Residential Tenancy Act (“the Act”) seeking to cancel a 1 Month Notice to End Tenancy for Cause dated February 9, 2018 (“the 1 Month Notice”); for compensation for money owed or damage or loss; and to suspend or set conditions on the Landlord’s right to enter the rental unit.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. The parties testified that they have exchanged the documentary evidence that I have before me.

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

Preliminary and Procedural Matters

The parties have been involved in several dispute hearings, the file numbers for which are reproduced on the front page for ease of reference.

In the most recent dispute, the Tenant applied to cancel a 1 Month Notice to end tenancy issued on February 9, 2018. While waiting for this disputes hearing date, the parties participated in an unrelated hearing on file # 31007644 before a different Arbitrator in relation to a 10 Day Notice to end tenancy for non-payment of rent.

The Landlord submitted a copy of a Decision that indicates the parties participated in a hearing on March 13, 2018, regarding the Tenant's dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2018. The Arbitrator found that the Tenant did not pay the full rent owing under the tenancy agreement and dismissed the Tenant's application. On March 20, 2018, the Landlord was granted an order of possession effective on 2 days' notice to the Tenant (the earlier Decision).

On April 6, 2018, The Tenant applied for a review consideration of the earlier Decision. The Tenant's application was considered and dismissed on April 10, 2018. The reviewing Arbitrator confirmed the order of possession granted in the earlier Decision made on March 20, 2018.

The Tenant testified that he filed documents at Supreme Court for a judicial review of the earlier Decision and has provided the Residential Tenancy Branch with a copy of the court paperwork.

A review of the case management system indicates that the Tenant submitted court documents on April 19, 2018; however, the court documents were not in evidence before me in this matter.

Following the hearing the Tenant's court documents were located and it was confirmed that the Tenant petitioned the Supreme Court for a stay of execution of the order of possession granted in the earlier Decision. Pursuant to section 58 (2)(c) of the Act, I find that the earlier issued order of possession is linked substantially to a matter before the Supreme Court and therefore, I will not considered it in this hearing.

Based on the information before me, I proceeded with the hearing to determine whether the Landlord has sufficient cause to end the tenancy based on the 1 Month Notice to End Tenancy for Cause dated February 9, 2018.

Issue to be Decided

- Is there sufficient cause to end the tenancy or should the 1 Month Notice be cancelled?

Background and Evidence

The parties testified that the tenancy started on November 1, 2013, as a one year fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$683.60 is to be paid to the Landlord by the first day of each month.

The Landlord is seeking to end the tenancy and receive an order of possession for the rental unit due to an incident that occurred on January 23, 2018. The Landlord testified that the Tenant is responsible for a fire that started in the subject unit that resulted in the building being evacuated, the attendance of the fire department, and harm to other occupants.

The Landlord issued the 1 Month Notice to the Tenant on February 9, 2018. The reasons provided for ending the tenancy within the 1 Month Notice are as follows:

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

Tenant has engaged in illegal activity that has, or is likely to:

- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 1 Month Notice on February 14, 2018, within the required timeframe.

The Landlord Ms. ML testified that she received a phone call on January 23, 2018, at approximately 2:30 pm regarding smoke coming from the Tenant's unit. She testified that she called 911 and then attended the Tenant's rental unit. She testified that when she arrived at the Tenant's door there was heavy smoke coming from under the door. The Landlord opened the door to check that nobody was inside and found the unit full of heavy black smoke.

The Landlord Ms. ML testified that the Tenant was not inside the rental unit and was not on the rental property. She testified that she observed him return to the rental property approximately 30 minutes later.

The Landlord Ms. ML testified that she suffered from smoke inhalation and had to attend a local hospital to be monitored and receive oxygen.

The Landlord testified that the Tenant was negligent and presents a safety risk to the other occupants of the rental property and that other occupants of the property are concerned. The Landlord testified that the Tenant has not accepted any responsibility for the incident and is blaming the Landlord for starting the fire. The Landlord requests an order of possession for the rental unit.

The maintenance person, Mr. MC testified that he received a call regarding smoke coming from the Tenant's unit and found the unit full of heavy smoke. He testified that he checked to see if anyone was inside and discovered that the stove burner was set to maximum with a pot of food sitting on the burner. He testified that he turned the burner off and then opened a sliding door for ventilation. He testified that he suffered smoke inhalation and had to stay overnight at the hospital.

The Landlord Mr. HK testified that he received a call about the fire and attended the property to find children and residents outside the building. He testified that he entered the Tenant's unit and found it to be a fire hazard as it was messy and very cluttered with boxes. He testified that the window side of the bedroom was completely covered by boxes and other possessions. He testified that the Tenants cluttered apartment was an issue that was presented at an earlier hearing on an unrelated matter. The Landlord provided a copy of the written Decision from an earlier hearing that is currently before the BC Court of Appeal.

Mr. HK testified that he also suffered smoke inhalation and attended the hospital for treatment.

The Landlords provided a copy of the Landlords' incident report dated January 24, 2018, in support of their testimony regarding the incident.

The Landlord also submitted a copy of a fire department incident report that indicates the fire originated in the kitchen at the stove top burner area.

In reply to the Landlord's testimony, the Tenant testified that he did not leave the stove on and that there is no evidence that anyone saw him leave the stove on. The Tenant submitted that the fire report does not prove who started the fire.

The Tenant submitted that he lives alone. He submitted that he left the rental unit at around 2:00 pm to go to the store. He testified that he locked the door to his unit behind him and was gone for approximately 45 minutes.

The Tenant testified that somebody entered his unit and turned the stove burner on.

The Tenant submitted that the evidence the Landlord provided and referred to from an earlier hearing should not be considered because that Decision is before the BC Court of Appeal.

Landlord's Right of Entry

The Tenant applied for an order to suspend or set conditions on the Landlords right of entry into the rental unit.

The Tenant testified that he does not want the Landlord coming into his unit and taking items. He testified that he knows the Landlord is entering the unit and taking items.

When the Tenant was asked to provide an explanation regarding how he knows the Landlord is entering his unit, the Tenant stated that how he knows the Landlord has entered is irrelevant and that I would not understand. The Tenant stated that he has plants, similar to how some people have dogs. He submitted that his plants let him know when somebody has entered his unit because they capture the smells of people who have entered his unit.

In response to the Tenant's submissions, the Landlord Ms. ML testified that they have never entered the Tenant's rental unit except in the case of the fire which was an emergency.

Monetary Claim \$18.00

The Tenant is seeking compensation from the Landlord in the amount of \$18.00. The Tenant submitted that the Landlord overcharged him \$18.00 for rent back in February 2018. He submitted that he paid the rent using his bank card and noticed that the Landlord had over charged him.

In reply, the Landlord submitted that this issue of February 2018, rent was dealt with at the earlier hearing on file #31007644. The Landlord submitted that the Tenant has filed a petition at Supreme Court on that Decision and the matter is now before the court.

Analysis

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I do not accept the testimony of the Tenant alleging that the Landlord is responsible for starting the fire in his unit. To accept the Tenant's allegation would require me to believe that the Landlord waited for the Tenant to leave the rental unit, accessed the Tenant's locked unit with a key, and intentionally turned the stove burner on maximum to intentionally start a fire and put the safety of all the other occupants and the building structure at risk. I would also have to accept that the Landlords intentionally inflicted

smoke inhalation damage upon themselves sufficient to require medical attention. Therefore, I find that the Tenant's suggestion is highly improbable and unconvincing.

I find that on a balance of probabilities, it is more likely than not that the Tenant accidentally left the stove burner turned on when he left the unit to go shopping.

While I recognize that accidentally leaving a burner on is a situation that could happen to anyone, I find that the outcome of this specific incident was quite serious. This was not a situation where the Tenant was in the unit and could take immediate action when he observed smoke or heard a smoke alarm. I find that the Tenant left the rental unit and rental property without checking that the burner was off and this negligence presented a significant risk to other occupants and the rental property. I am also mindful that the Landlords suffered smoke inhalation when they entered the Tenant's unit to check if the Tenant was inside.

I find that the Landlord has provided sufficient evidence to establish that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and put the Landlord's property at significant risk.

The Tenant's application to cancel the 1 Month Notice dated February 9, 2018 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 1 Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession of the rental unit. Since the effective date of the 1 Month Notice was March 31, 2018, I find that the Landlord is entitled to an order of possession effective no later than 1:00 pm on April 30, 2018, after service on the Tenant.

The Landlord is granted an order of possession effective no later than 1:00 pm on April 30, 2018, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant's request for monetary compensation for an over payment of February 2018 rent is dismissed. The issue was considered at an earlier hearing and the matter is before the Supreme Court.

The Tenant's request for an order to suspend or set conditions on the Landlords right to enter the rental unit is dismissed. The Tenant provided insufficient evidence to establish that the Landlord has entered his unit in contravention of the Act.

Conclusion

I find that the Landlord has provided sufficient evidence to establish that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and has put the Landlord's property at significant risk by causing a fire in the rental unit to occur.

The Tenant's application to cancel the 1 Month Notice dated February 9, 2018, is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on April 30, 2018, after service on the Tenant. This order may be filed in the Supreme Court 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: April 27, 2018

Residential Tenancy Branch