



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WHITE LION DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ET, FFL

Introduction

This is an Application for Dispute Resolution (“Application”) by the Landlord requesting an Early Termination of Tenancy and Order for Possession due to the Tenants posing an immediate and severe risk to the rental property.

Both of the Tenants were present for the scheduled hearing; two agents for the Landlord, RW and CW, were also present. In addition, two agents representing the new owners of the property, 1159796 BC Ltd., were also present. I find that the notice of hearing was properly served and that evidence was properly submitted and served.

I do note that additional evidence was submitted by the Tenants on an earlier application which is scheduled to be heard later this month on issues concerning payment of rent and other matters. The Tenants suggested that perhaps their evidence for this case was filed on that matter. I agreed to review that file to determine whether any of the photographic evidence submitted on that application was intended for consideration in this matter, as all parties are in receipt of that hearing notice and evidence and there would be no prejudice to either party. However, a review of that file did not provide for any evidence directly related to the issues on this particular matter.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing. Although much evidence was filed by the Landlord on this application, only the evidence directly relevant to the issues were considered and discussed herein.

Issue(s) to be Decided

Is the Landlord entitled to an Early Termination of the Tenancy and Order for Possession, pursuant to section 56 of the *Residential Tenancy Act* (the “Act”)?

Is the Landlord entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the Act?

Background and Evidence

The most recent tenancy agreement between the parties was effective November 1, 2017 for a 6-month fixed term to end on April 30, 2018. The property was sold by the Landlord to 1159796 BC Ltd, with property transferring on April 18, 2018. The Tenants only recently learned of the sale of the home and it appears unlikely that a new tenancy agreement will be executed as the agents for the purchasers testified that they plan to demolish the house and build 120 multi-family units on the property if possession was granted. In the meantime, this tenancy reverts to a month-to-month tenancy pending proper notice by either party to end it, or by order of the Residential Tenancy Branch.

The present issues seemed to arise beginning in January when there were complaints of junk and debris being stored on or about the premises. There was a verbal discussion between the parties on January 19th, 2018, followed by written demand by the Landlord on January 27, 2018 requiring the Tenants to remove all unlicensed vehicles and other items, and to maintain the property in a clean and safe condition. The Landlord states that there were up to five unlicensed vehicles at the premises; the Tenant states that all but two are licensed.

By February 1, 2018, the Landlord was sent a letter from the City of Nanaimo, where a complaint had been issued about the accumulation of “discarded materials, including household items, bicycle parts, auto parts, furniture, appliances, plastic containers, wood, metal, tools, garbage in bags, loose garbage, filth, rubbish, and discarded material” in violation of bylaw 7242; the owners were given until February 23rd to address the issue, or clean up costs would be recovered under property taxes.

The Landlord attended at the premises for an inspection on February 11, 2018 and dozens of photographs documenting the condition of the rental property were included as evidence. The Landlord prepared another letter dated February 13, 2018 requiring the Tenants to clean up the interior of the premises in addition to the surrounding area.

In total, over fifty photographs of the exterior and interior of the premises were taken and submitted into evidence; it is apparent that there is an excessive amount of debris piled up inside and out. There were motorcycles and tools and equipment located inside the downstairs suite, which the Tenant states he rented for that purpose after the city inspector told him to

remove some of the vehicles from the driveway area. The Tenant testified that the Landlord didn't like the tools and garage items being stored in the suite, and they were told to remove it.

By February 22, 2018, the City of Nanaimo issued another letter to the Landlord regarding a fire at the property, in violation of bylaw 7108. The fire crews arrived and extinguished a large fire burning at the rear of the house at 10:21 am, and four fines were issued totaling \$800.00. The fines issued were for: open burning outside permitted times, emission of offensive smoke or ash, fire too large, and burning prohibited materials.

The Landlord understood that the Chief had left copies of the fines with the Tenants. The Tenant states that he had friends helping him with the clean up that the Landlord had requested; he states that he told them to only burn the wood and to place other debris into a bin. The Landlord states that he supplied a large metal bin for "metal" debris. The Tenants left the premises and returned to find that the friends had burned other debris and that the fire department had been there to deal with the fire; they deny knowing about the fines until a few weeks after.

By March 15, 2018, the Landlord states he delivered another letter to the Tenants as there was still "extraneous items from the premises" and that they were being evicted. In addition, the fines from the fire were attached. The Tenants deny receiving any of these letters and demanded to see some sort of proof of service. The Landlord, RW, states that he personally delivered them directly to the Tenants at the rental property.

On March 19, 2018, the Landlord delivered another written letter stating that they attempted to view the property on March 17th but were unable to access the lower suite as SR stated she had no key for the new lock and that MB had the only key and was not available. The Landlord states that there has been no response to that letter and no key was provided to allow the Landlord access. Several photographs were taken on March 17 and submitted into evidence.

That same day, another letter was sent by the Landlord to the Tenant advising them that crews would be brought in to start a clean-up of the property on March 26, 2018. The Landlord, CW, states that she had sought information from the Residential Tenancy Branch and understood that they could enter the common areas to remove debris and unlicensed vehicles to be in compliance with the City of Nanaimo bylaws.

The Tenants reply by claiming that the property was basically cleaned up to the point that there was no violation of the city bylaws and no risk to the property. They understood from the city inspector that it was now "manageable" as between the Landlord and Tenant and that city officials no longer needed to be involved.

By March 30th, the Tenants were given a written letter advising that new owners would be taking possession as of May 1, 2018 and that the tenancy was to end. The Landlord brought this application on April 11, 2018, claiming that they are entitled to an early and immediate end to

this tenancy due to the issues involving unacceptable amounts of mess, junk and debris inside and outside of the house and they are concerned about a fire hazard; the Landlord admits that there was some improvement but that it is still in an unacceptable state.

Video was also submitted into evidence on April 11, 2018 to show the condition of the property outside. The Tenants argue that they were trying their best to rectify the situation and that the Landlord and city inspector kept frequenting the property needlessly. They would like to continue to live at the house and claim that they have satisfied all legal requirements and that no laws are being broken.

Analysis

The Tenant disputed service of notices and letters by the Landlord. The only notices that I considered were the various letters delivered by the Landlord to the Tenant, which RW indicated that he had delivered to one of the Tenants at the rental unit in each instance. I find that this is sufficient delivery of these letters and notifications to the Tenant, under section 88 of the Act. I make no finding of fact on the service or validity of the various Notices to End Tenancy served by the Landlord to the Tenant on other grounds, which are the subject of an upcoming hearing.

In any event, this Application is brought under section 56 of the Act, which requires no formal notice to be served on the Tenants aside from the Notice of the Hearing:

56(1)A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that:

(A) has caused or is likely to cause damage to the landlord's property,

(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy. [bolding added]

Accordingly, the only issue before me is whether, on a balance of probabilities, the Landlord has provided evidence that satisfies the requirements under the legislation which justify an early termination of the tenancy.

The evidence and testimony submitted would suggest that there is an argument under section 56(2)(a)(iii) and (iv) that the property is at significant risk and that the Tenants may have engaged in illegal activity that has caused or is likely to cause damage to the Landlord's property (as bolded in section 56 above). It should be noted that this can include an illegal activity by an invited guest of the Tenants, so long as the illegal activity took place on the property owned by the Landlord.

With respect to an allegation of illegal activity, Policy Guideline 32 states that a landlord has the burden of proving that the activity was illegal and how serious an impact the activity has on the landlord's property. The standard of proof for ending an tenancy for illegal activity is the same as for ending the tenancy for any cause under the legislation: the balance of probabilities.

"In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants."

The Landlord has brought several allegations forward for consideration. The Tenants have changed the locks and have not complied with the Landlord's request to provide a key; this is not an issue which would warrant an early end to the tenancy, as the Landlord has other remedies available under the legislation while continuing the tenancy.

With respect to the fire on February 22, 2018 which resulted in four fines being issued, this Bylaw is known as:
"FIRE PROTECTION AND LIFE SAFETY REGULATION BYLAW 2011 NO. 7108".

The relevant sections referenced in the written fines are as follows:

"(3) No person who has been issued a Burning Permit, for an Open Burning fire on a lot that is one (1) acre in size or greater or a lot on Protection Island, shall ignite or maintain a fire except

on Fridays and Saturdays from sunrise to sunset during the period from April 01 to April 30th and November 1st to November 30th of each year

(4) No person who has been issued a Burning Permit for a special event shall ignite or maintain a fire:

- (a) except on the dates and times permitted on the Permit;*
- (b) contrary to the permit conditions.*

(5) No persons shall:

- (a) maintain an Open Burning fire greater than one and half (1.5) metres across in size;*
- (b) locate an Open Burning fire less than three (3) metres from any combustibles; and*
- (c) fuel the Open Burning fire except by hand feeding it.*

(6) No person shall cause, allow or permit open burning of construction materials, stumps, land clearing materials and debris or household garbage."

It is clear from the evidence that the Tenants and/or their guests were negligent in causing the fire to be in contravention of the bylaws. As a result, they created a dangerous situation that required the fire department to intervene to put out the fire. The Landlord has incurred \$800.00 in fines as a result of this activity. However, the property is not imminently at risk as a result of the fire that was extinguished back in February; accordingly, under section 56(2)(b) there is no reason why the Landlord cannot simply provide a One-Month Notice to End the Tenancy for Cause.

With respect to the overall condition of the interior and exterior of the rental property, the Landlord received a notice from the City regarding Bylaw 7242, which is known as:

THE PROPERTY MAINTENANCE AND STANDARDS BYLAW 2017

Paragraph 4 Regulations states as follows:

"No person, owner or occupier of real property or their agents shall:

- 1. cause or permit rubbish to collect or accumulate on or around lands or buildings owned or occupied by them.*
- 2. cause or permit water to accumulate on or around lands or buildings owned or occupied by them.*
- 3. cause or permit rubbish to overflow from or accumulate around any container.*
- 4. where a building permit has been issued, cause or permit demolition waste, construction waste or trade waste to accumulate on or around the property.*
- 5. place graffiti on walls, fences, or elsewhere adjacent to a public place.*
- 6. interfere with or obstruct a Bylaw Enforcement Officer in the exercise of his/her duties."*

As a result of a complaint, the city officer inspected and found discarded materials including household items, bicycle parts, auto parts, furniture, appliances, plastic containers, wood, metal, tools, garbage in bags, loose garbage, filth, rubbish, and discarded material in contravention of this bylaw. The photographs and video provided by the Landlord support this finding.

The Tenants testified that progress had been made, and that the situation is now acceptable; however, no photographs or other independent evidence was submitted in support of this position. As I must rely on the evidence before me, I find that on a balance of probabilities, the Tenants have allowed an accumulation of debris in and around the rental unit which would be considered unacceptable by most.

Early termination of a tenancy without notice is reserved for only the most severe cases where there is an immediate danger to persons or property which would make it unreasonable to wait for a notice to end a tenancy under section 47; a notice for cause under that section requires the landlord to provide one month notice. I find that the debris inside and outside the rental premises and the past fire infraction does not justify an early end to the tenancy without notice, under section 56 of the Act. Although there are some serious issues with this tenancy, the facts do not support the argument that this merits an emergency order for possession without benefit of a One Month Notice to End Tenancy for Cause, under section 47 of the Act.

Now that the possession of the property has changed ownership, I note that the new owners are assumed to be the new Landlord despite no formal assignment of the tenancy agreement to them. The definition of "Landlord" under the Act includes:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
 - (i) permits occupation of the rental unit under a tenancy agreement, or*
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*

The original Landlord is also considered a landlord under the legislation when the context requires it.

Accordingly, the new owners may wish to monitor the ongoing situation regarding the condition of the premises to determine whether a One-Month Notice to End Tenancy for Cause is appropriate.

Conclusion

I hereby dismiss the Landlord's Application for an Order for Possession to end the tenancy early, pursuant to section 56 of the Act.

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: May 14, 2018

Residential Tenancy Branch