



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for this application.

The Landlord and a friend acting as an agent for the Landlord were present for the duration of the teleconference hearing, as was the Tenant. A witness for the Landlord joined during the hearing to present testimony.

The Landlord and Tenant confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was exchanged in accordance with the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided testimony that she purchased the home where the rental unit is located in October 2017. At the time of purchase, the Tenant was already residing in the unit and the Landlord stated that the Tenant was under a fixed term tenancy with a clause to vacate on March 31, 2018 as agreed upon by the original Landlord and the Tenant.

The Tenant provided testimony that he moved into the rental unit on April 1, 2017. Current monthly rent is \$655.00 per month due on the first day of each month and a security deposit in the amount of \$315.00 was paid at the outset of the tenancy.

The Landlord stated that when viewing the home for purchase, she was not able to view the Tenant's bedroom as the Tenant had not provided a key to access the bedroom. On March 27, 2018, the Landlord entered the rental unit to do an inspection and took photos in the home. She testified that there were boxes everywhere, including against the furnace and she advised the Tenant to clear the boxes due to the fire hazard it was creating.

The Landlord attended the rental unit again on March 30, 2018 and asked for a copy of the key to the bedroom. Although the key was not provided, the Tenant was present and allowed the Landlord into the bedroom. This is when the Landlord saw that boxes and bags were present throughout the bedroom, as well as throughout the rest of the rental unit. The Landlord stated that she was not able to count how many boxes were present. The Landlord also noted rotting food in the fridge. Photos of the rental unit were submitted into evidence.

On April 2, 2018, the Landlord left a note on the Tenant's door asking him to tidy up. On May 22, the Landlord attend the rental unit for another inspection and asked the Tenant to move the boxes away from the wall and the furnace. On July 9, 2018, the Landlord entered the rental unit again and testified that boxes and bags were still in the rental unit from the floor to the ceiling.

The Landlord stated that she is worried about the safety risk of the boxes in the home. She submitted a letter from the other residents of the home, which states that they are worried about the risk of fire in the home and therefore the safety of themselves and their belongings.

The Landlord stated that she has still not received a key to the Tenant's bedroom. She also noted that the Tenant cut branches off a tree in the yard and left them stacked by the side of the home.

On May 24, 2018, the Landlord served the Tenant with a One Month Notice by giving it to him in person. The One Month Notice stated the effective end of tenancy date as June 30, 2018 and lists the following as the reasons for ending the tenancy:

- 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

The Tenant provided testimony that the previous landlord of the property provided him permission to get new locks on the bedroom door. He stated that the Landlord is able to provide notice and enter the unit for inspections, but does not need a key.

The Tenant noted that the rental unit is very small with only one closet, and therefore most of his belongings are stacked in boxes and bags throughout the unit. He stated that some of his clothes are in garbage bins on the bedroom floor and the boxes are full of papers that he needs to keep.

The Tenant provided testimony that from February until May 2018, he was very busy with work and did not have time to cleanup. However, since May 2018, the Tenant has had more time and has been working on tidying up the rental unit, including moving the boxes away from the wall. He testified that the boxes are not next to the furnace or the door and are therefore no longer a fire hazard.

The Tenant testified that all food is kept in the fridge and there are no cockroaches or other insects in the home.

The witness for the Landlord joined later in the hearing to provide testimony. She stated that she was present with the Landlord for the initial inspection of the unit prior to the Landlord purchasing the home. The witness testified to seeing boxes and bags everywhere throughout the unit, as well as rotting and mouldy food in the fridge. She stated that she did not look close enough to notice any bugs or insects.

The Tenant provided testimony regarding the tree that branches were cut and stated that it was an invasive plant that was overtaking the carport and could potentially cause

damage to the cars parked there. He pulled some of the plant away to create room for the cars.

The Tenant testified that he has been cleaning up since May 2018 and will continue to work on this. He confirmed that he received the One Month Notice from the Landlord in person on May 24, 2018. He applied to dispute the One Month Notice on May 31, 2018.

Analysis

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

The Landlord and Tenant provided conflicting testimony regarding the safety concern of the boxes and other items in the rental unit. Although they agreed to the presence of many boxes throughout the home, they were not in agreement as to the safety or fire risk that this may cause.

I note that in accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for ending the tenancy are valid.

I look to the evidence of both parties to determine whether there was cause for ending the tenancy. I accept the photos submitted by the Landlord of the rental unit. The photos, dated March 30, 2018 show boxes and bags stacked throughout the rental unit, covering most of the floor.

I refer to Section 47(1) of the *Act* that states the reasons a landlord may end a tenancy with a One Month Notice and find that the notice was issued due to Section 47(1)(d)(ii) and 47(1)(d)(iii) regarding serious concerns with the health and safety of other occupants, the landlord, and/or the landlord's property.

I also find that the Tenant agreed to the presence of a significant number of boxes in the home, and while he stated he is working on tidying up the home, he did not deny that the home remains cluttered.

I find that the photos show clutter that presents serious concerns for a risk of fire and given the cardboard boxes that the Tenant stated are mostly full of papers and stacked

against the wall, I find the risk of fire to be significant. I also find that boxes stacked against a wall pose a significant risk of mould growth, particularly in a lower level unit.

I also find that the Tenant's own safety, along with the safety of the other occupants in the building are at risk, not only due to risk of fire, but due to a potential challenge with having emergency personnel enter the rental property.

I also note that Section 32(2) of the *Act* states the following:

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The Landlord provided a warning letter to the Tenant asking him to clean up and advising him of the safety risk of the condition of the rental unit. I also accept the Landlord's testimony that further verbal warning was provided to the Tenant on May 22, 2018. When the issue was still present after the warnings were provided, a One Month Notice was served on May 24, 2018.

As such, I find that the Tenant was provided sufficient time to deal with the concerns brought forth by the Landlord. Although the Tenant has begun to clean up, I find that the safety risk is still present and the risk remains high.

Based on the above analysis, I find that the reasons for the issuance of the One Month Notice are valid and therefore the Tenant's application to cancel the One Month Notice is not successful.

I find that the One Month Notice dated May 24, 2018, complies with Section 52 of the *Act*, and is therefore upheld.

Pursuant to Section 55(1) of the *Act*, if a tenant applies to cancel a notice to end tenancy and the notice is upheld and is found to be in compliance with Section 52, an Order of Possession must be granted to the landlord. As such, I grant an Order of Possession to the Landlord effective July 31, 2018 at 1:00 pm.

As the Tenant was not successful in his application, I decline to award the recovery of the filing fee paid for this application.

Conclusion

I grant an Order of Possession to the Landlord effective **July 31, 2018 at 1:00 pm**. This Order must be served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 26, 2018

Residential Tenancy Branch