



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC KINSMEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This decision pertains to the tenant's application for dispute resolution made on June 6, 2018 under the *Residential Tenancy Act* (the "Act"). The tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice").

The tenant, her legal advocate, and two agents of the landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

I note that the name of the landlord as submitted on the tenant's application is not the legal name of the landlord. The landlord's agents confirmed that the legal name of the landlord is that as listed in the style of cause of this decision.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If the tenant is not entitled to an order cancelling the Notice, is the landlord entitled to an order of possession of the rental unit?

Background and Evidence

The tenant commenced a month to month tenancy on April 1, 2017, rent is \$1,040.00, due on the first of the month, and there was a security deposit of \$500.00. The written tenancy agreement (submitted into evidence) included several addenda, one of which is titled "POLICIES & PROCEDURES." The addendum includes the requirement that having valid tenancy insurance "is a condition of your tenancy agreement".

In April 2018, BC Hydro issued notices to all tenants of the multi-unit complex (in which the rental unit is located) regarding a planned power outage on May 6, 2018. The landlord testified that the notices were sent to all tenants and posted around the complex. The tenant testified that she was unaware of the notices. The landlord submitted a copy of the BC Hydro notice into evidence.

On May 6, the tenant was away, but her mother (the "grandmother") was at the rental unit taking care of the tenant's two children. The grandmother got up to make breakfast for the boys, put a pot on the stove, turned on the burner, and discovered that there was no power. The grandmother and children then left the rental unit in search of breakfast. There was no electricity when they left, but the burner had been left turned on. The power eventually came back on, the pot overheated, and a fire ensued.

The landlord received a phone call on their emergency line around 5:00 p.m. that afternoon from the fire department, notifying them of a fire in the rental unit. The landlord's agent (I.L.) attended the scene and spoke with the fire chief who told her the unit was uninhabitable due to the extensive fire damage in the kitchen and because of smoke damage. The landlord submitted into evidence several photos of the damage.

The tenant found out about the fire upon returning home a short while later, and went to meet with the landlord's agent. The tenant told the landlord that their tenancy insurance policy had not been renewed a month earlier due to unpaid premiums.

On May 28, 2018, the landlord issued the Notice, and its agent C.N. served the Notice by posting it on the tenant's door on May 28, 2018, with a June 30, 2018 end of tenancy date. The reasons for the Notice being issued were (as they appear on page 2 of the Notice, submitted into evidence by the landlord):

- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - 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 or property/park.

In the "DETAILS OF CAUSE(S)" section on page 2 of the Notice, the landlord included the following information (reproduced as written):

- On May 6, 2018- Kitchen fire- Kitchen fire was reported by the Fire Department to the Landlord
- Landlord attended site and was advised by fire department not to let the tenant stay in the unit as per fire damage
- Landlord's insurance provider came on May 8, 2018 and advised that unit is uninhabitable and it will take several months for repairs to occur
- Tenant was not carrying tenancy insurance coverage as per their Tenancy Agreement.

The landlord testified at length as to why tenants are required to carry tenancy insurance. The landlord acknowledged that "accidents happen" but that the tenant did not have required insurance. On cross-examination by the tenant's legal advocate, the landlord testified that the reason the tenant was being evicted is because of inadequate insurance. In addition, the landlord testified that by not enforcing the landlord's rules regarding tenancy insurance, they would be setting a precedent with the other tenants.

The tenant's advocate submitted that it "was just an accident," that the tenant was more than willing to set up a payment plan (for the landlord's insurance deductible of \$3,000.00), that no one was harmed, that she had "huge regrets" in regard to the incident, and that had there been more working smoke detectors the resulting damage would have not been quite as extensive. The tenant testified that she recently visited the rental unit and that all the repairs are now complete.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant disputes a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice was issued.

The landlord's agent testified that the "main reason" why they sought to evict the tenant was "because of inadequate insurance." Ordinarily, a landlord might seek to end a tenancy based on a breach of a material term of a tenancy agreement. Here, the requirement to carry tenancy insurance is most likely a material term of the tenancy agreement, as evidenced by the various prominent language about such insurance within the agreement and the addendum.

However, the landlord did not complete, or mark by way of a check mark or an "x" within the Notice that it was being issued for a breach of a material term. I do not find, despite the landlord's submissions and evidence regarding the requirement for the tenant to carry insurance, that the tenant's failure to carry tenancy insurance was a valid ground on which to issue the Notice.

Section 47(1)(f) of the Act states that a landlord may end a tenancy if "the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property." This ground was one of the grounds on which the landlord issued the Notice.

The landlord testified that the fire was so extensive that the fire chief directed that the tenant could not live in the rental unit, that it would be "impossible for the tenant" to live there because of the smoke damage. In addition, the insurance adjuster advised the landlord (by way of email, submitted into evidence) that the extent of the damage was such that the tenant's belongings needed to be out before repairs could be undertaken. The landlord's position was that the "tenant has put [the landlord's] property at significant risk," and that the "minimum thing you should do is check the stove."

The tenant corroborated the landlord's argument that the tenant, or a person permitted on the property by the tenant (in this case, the tenant's mother), caused the fire.

Taking into consideration all of the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground, under section 47(1)(f), on which they issued the Notice.

Having found that the landlord has proven a section 47(1)(f) ground on which the Notice was issued, I decline to consider the other grounds included and indicated in the Notice.

Given the above, I dismiss the tenant's application for an order cancelling the Notice.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their application for dispute resolution is dismissed, or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

Having carefully reviewed the Notice, I find that the Notice issued by the landlord on May 28, 2018 complies with the requirements as set out in section 52 of the Act.

Conclusion

The landlord is entitled to an order of possession effective two days from the date on which the order is served on the tenant, pursuant to section 55 (1) of the Act. This order may be filed in 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 Act.

Dated: August 3, 2018

Residential Tenancy Branch