



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On September 13, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for Cause, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Landlords stated that they received the Tenant’s evidence submissions and that they did not submit any evidence for the hearing.

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 Matters

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the testimony and evidence continued, and a Decision made by myself (the Arbitrator).

Issues to be Decided

Should the One-Month Notice to End Tenancy for Cause, dated August 29, 2018 (the “Notice”), be cancelled, in accordance with Section 47 of the Act?

If the Notice is cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenant have been involved in a previous arbitration and submitted evidence and invited witnesses to this hearing to address many aspects of this complex tenancy. The Tenant has applied to cancel a Notice to End Tenancy and I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my Decision will focus on the validity of the Notice and the reasons for its issuance, not on the myriad other issues that I listened to during the hearing.

The Landlord and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on July 1, 2008 and continued on as a month-to-month tenancy. The monthly (reduced) rent is \$825.00 and the Tenant paid a \$475.00 security deposit.

Landlords' Evidence:

The Landlord testified that they provided notice, for information, to the Tenant on March 13, 2018, that they were planning to put the rental unit on the market for sale.

The Landlord stated that the Tenant, soon after receiving notice from the Landlords about the pending sale and without the consent of the Landlord, ripped out the tub surround of the rental unit's bathroom, exposing dry rot and mold.

On April 27, 2018, the Landlord responded by giving the Tenant notice that they intended on entering the rental unit to make repairs to the bathroom on May 1, 2018. On May 1, 2018, the Landlord stated that the Tenant called the Landlord and threatened to call the police if the contractor entered the rental unit to conduct repairs. The contractor did not enter the rental unit and the work that the contractor had planned was not completed.

The Landlord stated shortly after this, the Tenant called the Landlords' real estate agent and intimidated her to a point where she declined to list the rental unit for sale for the Landlords.

On May 27, 2018, the Landlords gave the Tenant notice that they intended on entering the rental unit to fix the damage and address the mold in the bathroom on May 29, 2018. When the contractor arrived, he noticed that the Tenant had posted a sign on his door that said, "Do not enter or police will be called." The contractor did not feel comfortable and both the Landlord and the contractor did not enter the rental unit.

The Landlord stated that the Tenant interfered in another attempt to remediate the bathroom in early June of 2018. The Landlord referred to a copy of an email, dated June 7, 2018, that indicated that the Tenant contacted the contractor and suggested that any remediation should be delayed as a permit was not in place and that the issue was much worse according to an environmental firm that the Tenant brought in to assess the rental unit. The remediation work was delayed again.

The Landlord testified that they served a One-Month Notice to End Tenancy to the Tenant in June 2018 for his interference with the Landlords' attempts to repair the bathroom. However, after an arbitrated hearing in August 2018, the One-Month Notice to End Tenancy was cancelled, and the tenancy continued.

The Landlord stated that they served the second Notice to the Tenant via registered mail on August 30, 2018, which provided a move-out date to the Tenant for October 31, 2018. The Landlords stated that the reasons for issuance of the Notice included that the Tenant significantly interfered with the Landlord to complete necessary repairs in the rental unit; and, that the Tenant seriously jeopardized the lawful right of the Landlord to remediate the rental unit and to market the rental unit for sale.

The Landlords are requesting an Order of Possession as the Tenant is not planning to relinquish his occupation and possession of the rental unit.

Witness VB's Evidence:

The Landlord called their witness, Witness VB, to testify. Witness VB stated that he has done maintenance on the residential property for ten years and has known the Tenant for that amount of time. Witness VB stated that he was scheduled to attend to the Tenant's rental unit to conduct repairs in the bathroom, but the Tenant wouldn't let them in. Witness VB said that the Tenant was threatening the contractors about having to have permits and on May 29, 2018, when he was rescheduled to attend the Tenant's rental unit to do the work on the bathroom, that he was not allowed into the rental unit.

Witness VB stated that he is wasting his time and will not go in to the rental unit if the Tenant continues to threaten him by calling the police.

Tenant's Evidence:

The Tenant testified that he moved out of the rental unit into some temporary accommodations in mid-May 2018, as the mold in the rental unit was toxic and a consulting company recommended that the Tenant vacate the rental. The Tenant stated that he still has all of his possessions in the rental unit and that they require professional cleaning before he can remove them. The Tenant has been paying his monthly rent.

The Tenant stated that the Landlords provided verbal approval to do some renovation work in the bathroom of the rental unit.

The Tenant obtained a professional opinion as to the extent of the mold throughout the rental unit and stated that any remediation that the Landlords conduct should be with a permit, with a certified contractor and not be limited to the bathroom of the rental unit.

The Tenant acknowledged that he posted a sign on his door advising people not to enter or he would call the police. The Tenant also said that he contacted the Landlord's contractor to discuss permits, suggested that the remediation be delayed in order to deal with the source of the issue, a leaky roof, and to advise that the whole house is contaminated with higher levels of mold.

The Tenant discussed the predicament that he is in and how he cannot live in the rental unit and that his property is damaged; therefore, he cannot end the tenancy and move to another rental unit. The Tenant stated that he would not interfere with the Landlords' intention of remediating the rental unit if they were planning on doing it right; with permits and with certified professionals who could properly deal with the mold issue.

Analysis

In this Analysis, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

The Landlord testified that he served a One-Month Notice to End Tenancy for Cause on September 5, 2018, by delivering it to the Tenant by registered mail. The move-out date

on the Notice stated October 31, 2018. The reasons stated on Page 2 of the Notice indicated that it was served as the Tenant has significantly interfered with the Landlord of the residential property; and, seriously jeopardized a lawful right or interest of the Landlord.

The Landlord has served the Notice on the Tenant based on Sections 47(1)(d) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord had sufficient evidence to prove that the Tenant's actions significantly interfered with the Landlord's intention to repair the rental unit or seriously jeopardized the lawful right of the Landlord to either repair the rental unit or list their property for sale.

The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the Notice are valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I accept both the Landlords' and Tenant's testimony with regard to the condition of the bathroom, that there was mold and dry rot present and that it required urgent, if not emergent, repair. The Landlords provided undisputed evidence that the Tenant interfered with the Landlords' intention to repair the bathroom by threatening to call the police if anyone entered the rental unit, placing a notice on his door not to enter and by convincing one of the Landlords' contractors to postpone repairs.

Section 32 of the Act sets out the responsibility of a Landlord to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of a rental unit, to make it suitable for occupation by a Tenant.

When I consider the testimony from all parties, the evidence provided and the legislation, I find that the Tenant's actions significantly interfered with not only the Landlords' responsibilities pursuant to Section 32 of the Act, but also the Landlord's proactive actions to repair the rental unit. I, therefore, find that the reasons for the Notice are valid. As a result, I dismiss the Tenant's Application without leave to reapply.

I find that the Notice complies with Section 52 of the Act, and as such, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act. As the vacate date on the Notice indicated October 31, 2018, I issue an Order of Possession that will be effective on that date.

As this tenancy, which is now over, still has many unresolved issues, I recommend to all parties that they work together to resolve their conflict in a respectful manner and when required, to communicate in writing to ensure clear understanding and as a means to keep track of their interactions.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on October 31, 2018 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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: October 26, 2018

Residential Tenancy Branch