Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 30, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 22, 2018 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Tenant attended the hearing in person and was accompanied by W.S., a witness. The Tenant was also accompanied by K.B., legal counsel, and F.M., a translator. The Landlord attended the hearing on his own behalf and was accompanied by B.T., the new property manager. The Tenant, W.S., the Landlord, and B.T. provided affirmed testimony.

The Tenant testified the Application package was served on the Landlord by registered mail on August 2, 2018. A Canada Post registered mail receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. Accordingly, I find the Landlord is deemed to have received the Application package on August 7, 2018.

The Landlord submitted documentary evidence in response to the Application. According to the Landlord, it was served on the Tenant by leaving a copy at the door of the Tenant's rental unit. K.B. acknowledged the Tenant received it and had an opportunity to consider it. Pursuant to section 71 of the *Act*, I find the Landlord's documentary evidence was sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the Tenant's occupation of the rental unit began on August 1, 2013. Currently, rent in the amount of $1,023.74 per month is due on the first day of each month. The Tenant paid a security deposit of $462.50, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice. According to the Landlord, the One Month Notice was posted on the door of the Tenant's rental unit on July 22, 2018. The Tenant acknowledged receipt of the One Month Notice on that date.

The One Month Notice was issued on the following bases:

- Tenant or a person permitted on the property by the Tenant has
    - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
    - 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.

- Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Specifically, the Landlord testified that on May 26, 2018, the Landlord received a complaint from the occupant of unit #102 that water was leaking into their unit from above. The Landlord went to unit #202 in an attempt to determine the source of the water and again observed water leaking from above. The Landlord continued to unit #303 and was permitted entry. The Landlord testified he saw a washing machine in the bathroom and a pool of water extending from the bathroom to the living room. Photographs of ceiling damage in units #102 and #202 were submitted in support.

According to the Landlord, the Tenant was previously warned about having a washer in the rental unit. On an inspection report dated March 17, 2017, notes were made about the presence of a washing machine in the rental unit and included a reminder to send a letter to the Tenant. In a letter dated April 6, 2017, the Landlord advised the Tenant that heavy appliances were not permitted in the building due to plumbing issues. In addition, the Tenant was referred to paragraph #16 of the tenancy agreement, which prohibited large appliances or equipment. The Tenant was asked to remove the washing machine.

The Landlord testified that a subsequent inspection by the building manager at the time confirmed that the washing machine had been removed. Accordingly, no further issues arose until the flood on May 26, 2018.

In reply, the Tenant testified that the flooding was due to a leak in the bathtub, not the washing machine.

Further, on behalf of the Tenant, K.B. acknowledged the Tenant had a washing machine in the renal unit but that it was due to a “misapprehension” that arose due to the Tenant’s ability in English. He stated the washing machine was removed from the rental unit on June 1, 2018, although the Landlord testified the washing machine was still in the rental unit during an inspection after that date. In any event, K.B. stated there had been numerous previous inspections in the rental unit and that the washing machine had not been identified as an issue. K.B. confirmed that correspondence from the Landlord has occasionally been ignored due to language difficulties.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlord wishes to end the tenancy on the bases outlined above.

In this case, I find the Tenant has put the Landlord's property at significant risk, and has caused extraordinary damage to the rental unit. There are several reasons for this. First, paragraph #16 of the tenancy agreement confirms the Tenant was not permitted to install heavy appliances or equipment of any kind in the rental unit without the Landlord's authorization.

Second, I find it is more likely than not that the Tenant was aware a washing machine could not be installed in the rental unit because the plumbing in the building did not support it. After receiving the April 6, 2017 letter, the Tenant removed the washing machine but subsequently replaced it with an upgraded model. I reject the Tenant's assertion there was any misunderstanding about whether or not a washing machine was permitted in the rental unit.

Third, I find it is more likely than not that the washing machine was the cause of the flooding and damage that occurred. I reject the Tenant's testimony that the flooding was caused by a leak in the bathtub. This assertion was not supported by any documentary evidence.

In light of my finding above, I find that the Tenant's Application is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

Pursuant to section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. The 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 *Residential Tenancy Act*.

Dated: September 20, 2018

Residential Tenancy Branch