



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant's advocate testified that the landlord was personally served with the notice of dispute resolution package on July 18, 2018. The property manager (the "landlord") confirmed receipt of the dispute resolution package on July 19, 2018. In either event, I find that the landlord was served with this package, in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

2. If the tenant's application is dismissed, and the notice to end tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2010 and is currently ongoing. Monthly rent in the amount of \$384.00 is payable on the first day of each month. A security deposit was not paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 16, 2018 a One Month Notice to End Tenancy for Cause with an effective date of September 1, 2018 (the "One Month Notice") was posted on the tenant's door. The tenant confirmed receipt of the One Month Notice on July 16, 2018.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has 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.
- Tenant has not done required repairs of damage to the unit/site.

Both parties agree that on May 10, 2018, the tenant left a pan on the stove unattended which then started a fire causing damage to the kitchen and smoke damage to other areas of the apartment. Both parties agree that the fire department attended and cut a hole in the kitchen ceiling and wall above the stove in order to ensure that the fire was put out.

The landlord entered into evidence a colour photograph of the cupboards, wall and ceiling above the stove where the fire took place. The white cupboards appear black, as does the wall and ceiling. The wall and ceiling above the blackened cupboards both

have large ragged holes in them. The landlord also submitted colour photographs showing smoke damage on the walls of the suite and on the exterior wall of the kitchen.

The landlord testified that she attended at the tenant's property on the day of the fire to check in on the tenant. The fire department said that the tenant would be okay to spend the night in the unit.

The landlord testified that her goal was to have the repair work done as soon as possible, preferably by the building's maintenance personnel while the tenant remained in the unit. The landlord testified that she hired a company to assess the damage and was told that the drywall tape used in the suite contained asbestos and that this would require special asbestos abatement. The landlord testified that the company also informed her that they would have to smoke seal the entire unit and that every item within the unit would have to be properly cleaned off site to remove the soot from the fire. The company informed the landlord that in order for the work to be completed, the apartment would have to be vacant for one to two months. The landlord entered into evidence an email dated June 6, 2018 from the remediation company outlining the above requirements.

The landlord testified that the cost and scope of remediation meant that their maintenance personal would not be able to complete the repair work and necessitated the landlord to contact their insurer which charges a \$3,000.00 deductible. The landlord testified that the tenant was supposed to have his own fire insurance but that he did not and so she had no choice but to claim under the building's insurance.

The landlord testified that the tenant has refused to move out for the required one to two months to allow for the repairs to be made. The landlord testified that if the tenant moved out to allow for the repair work to be done, he would have been allowed to return to his unit at the same rental rate.

The tenant's advocate testified that the tenant contacted another company who told him that his unit did not have any asbestos and quoted him \$1,200.00 to \$1,500.00 to complete the work. The tenant's advocate testified that the work could be completed while the tenant lived in the unit. No documents outlining the above were entered into evidence by the tenant.

The tenant's advocate testified that the tenant is of limited means and cannot afford to move out and has no-where to go. The tenant's advocate testified that the tenant wants

to be allowed to repair the damage and does not want to go through the landlord's insurance. The tenant's advocate testified that before the fire occurred, the tenant was not aware that he was required to have fire insurance.

Analysis

Section 47(1)(d)(iii) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

I find that by leaving a pan unattended on the stove, the tenant started a fire which caused significant damage. I find that the fire started by the tenant put the landlord's property at significant risk as there was a real possibility that the fire could have spread beyond the tenant's kitchen. I therefore dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

I have dismissed the tenant's application and upheld the landlord's One Month Notice; I therefore find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Since I have found that the landlord is entitled to an Order of Possession based on the tenant putting the landlord's property at significant risk, I decline to consider if the landlord is entitled to an Order of Possession for the following reasons stated on the One Month Notice:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

- Tenant has not done required repairs of damage to the unit/site.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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: September 12, 2018

Residential Tenancy Branch