



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 support person testified that the landlord was served the notice of dispute resolution package by registered mail on August 9, 2018. The property manager (the "landlord") confirmed receipt of the dispute resolution package via registered mail on August 13, 2018. I find that the landlord was served with this package on August 13, 2018, 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 landlord's 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 February 1, 2013 and is currently ongoing. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$450.00 was 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 she served the tenant with the One Month Notice to End Tenancy for Cause with an effective date of August 31, 2018 (the "One Month Notice") via registered mail on July 23, 2018. The tenant confirmed receipt of the One Month Notice on July 27, 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:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk.

The landlord testified that the tenant hoards possessions, and that the subject rental unit is extremely cluttered. The landlord testified that the tenant's possessions are piled throughout the house making it difficult reach different parts of the tenant's two-bedroom unit. The landlord testified that the amount of clutter prevents the use of most rooms in the rental unit from operating for their intended purpose.

The tenant liaison testified that she is employed by the landlord to work with the tenants to support their tenancies and is a hoarding expert. The tenant liaison testified that she has reached out to a number of different organizations and support workers in order to

help the tenant clean up her apartment to save her tenancy. The tenant liaison testified that all of her efforts to help the tenant were not successful.

The landlord testified that she didn't serve the tenant with a One Month Notice to End Tenancy prior to the One Month Notice which is the subject of this hearing because she was hoping to connect the tenant with resources to help the tenant clean up her suite and save her tenancy. The landlord testified that her efforts and those of the tenant liaison were unsuccessful, and that she felt it necessary to issue the One Month Notice because the level of clutter in the subject rental suite is a danger to anyone who enters the suite and poses a fire hazard threatening other tenants and the landlord's property.

The landlord entered into evidence numerous inspection reports from 2014-2018 stating that the tenant's rental unit is cluttered and dirty. The landlord entered into evidence a copy of a "re-inspection" form dated February 7, 2018 for the subject rental property indicating there was a hoarding problem in the unit and that the door to the unit could not open all the way due to the level of material inside the rental property. The landlord submitted 19 photographs of the subject rental property which show that most rooms in the house were buried under a large quantity of material and that the appliances in the kitchen were unusable for their intended purpose.

The landlord entered into evidence a letter from the landlord to the tenant dated February 26, 2018 advising that the tenant's hoarding breaches section 32 of the Residential Tenancy Act which states that the tenant must maintain ordinary health, cleanliness and sanitary standards throughout the rental unit. The letter went on to say that the landlord would be contacting the local fire station regarding their concerns for the safety of the other tenants and the building. The letter requests that the tenant clean her suite.

The tenant liaison testified that they have annual fire inspections of all units in the complex. The landlord entered into evidence a fire inspection report from a fire protection company dated March 7, 2018. The inspection report states that the subject rental unit has an "excessive fuel load".

The tenant liaison testified that she and the landlord inspected the subject rental unit again on July 16, 2018 and found it to be in deplorable condition. The landlord entered into evidence the tenant liaison's notes from the inspection which read in part:

"The kitchen floor and counters were full of things, no counter space or floor was visible. Food could not and should not be prepared in this kitchen. As a former

member of the Hoarding Action Response Team, I would advise that the stove be disengaged until the fire risk has been addressed..... The foyer is not a clear means of egress, nor are either of the bedrooms or the living room. The fire by-law states there must be a 32" path clear to each window and door; all door must open fully. This is not the case in this apartment."

The landlord entered into evidence photographs of the subject rental suite from the July 16, 2018 inspection. The photographs show a very cluttered home and unusable kitchen.

The tenant liaison testified that the tenant was sent a letter dated July 19, 2018 advising that the tenant would have to clear off her stove as the level of material on it during the July 16, 2018 inspection constituted a fire hazard. The letter stated that if the tenant did not clear off her stove, the stove would be disabled. The letter provided notice to enter the tenant's suite on July 23, 2018. The letter dated July 19, 2018 was entered into evidence.

The tenant liaison testified that she inspected the subject rental unit on July 23, 2018 and the stove was cleared off and therefore was not disconnected.

The tenant liaison testified that she inspected the subject rental unit again on September 5, 2018. The tenant liaison's notes were entered into evidence, and read in part as follows:

"the clutter seemed worse than before....The kitchen was again un-usable and dangerous, no cooking should be done on the stove due to the amount of combustibles in the kitchen and the risk of fire."

The landlord entered into evidence photographs taken of the subject rental unit on September 5, 2018. The images show that all of the counters in the kitchen are covered in debris. The stove is surrounded by various materials, some of which looks to be made of paper. Items are piled high throughout the rest of the subject rental property. The tenant acknowledged that the above photograph's entered into evidence were photos taken at the subject rental property on September 5, 2018.

The tenant testified that since September 5, 2018 she has improved the cleanliness of her suite and has now cleaned the two bedrooms and that all she has left to clean are the hallway and living room. The tenant testified that she wants to do better but that she suffers from depression and often has no appetite or energy.

The tenant testified that she only cooks supper at home and doesn't think that she would start a fire.

Analysis

Sections 47(d)(ii) and 47(d)(iii) of the *Act* state 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:

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- put the landlord's property at significant risk.

Based on the testimony of both parties and the documentary evidence provided, I find that the amount of materials located on and around the tenant's stove constitutes an ongoing fire hazard. I also find that the quantity of materials stacked throughout the subject rental property is, as stated in the fire inspection report, an excessive fuel load. I find that the combination of the risk of fire from the materials on and surrounding the stove and the excessive fuel load in the apartment put the landlord's property at significant risk. I therefore dismiss the tenant's application to cancel the One Month Notice, 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*.

Since I have dismissed the tenant's application and upheld the landlord's One Month Notice, I 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 section 47(d)(iii) of the *Act*, I decline to consider if the landlord is entitled to an Order of Possession based on section 47(d)(ii).

Conclusion

Pursuant to section 55 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 14, 2018

Residential Tenancy Branch