



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H.W. ROOMS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction and Preliminary Matters

On July 25, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an early termination of the tenancy, an Order of Possession for the rental unit and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, the Tenant and the Tenant’s Advocate 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 Tenant testified that they received the documentary evidence provided by the Landlord; however, the Landlord stated that he did not receive a documentary evidence package from the Tenant. The Tenant’s Advocate stated that the evidence package had been hand delivered to the Landlord’s place of business on August 31, 2018. Although I found that the Tenant delivered his evidence package in accordance with Section 88, and that it could be referenced during the hearing, the Tenant or his Advocate did not refer to any of this evidence during 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.

Issues to be Decided

Should the Landlord be granted an Order of Possession in accordance with Section 56 of the Act?

Should the Landlord be reimbursed for the cost of the filing fee?

Background and Evidence

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

The tenancy began in October 2015 and a new owner took over the building on July 1, 2016. There is no formal, written Tenancy Agreement as they were not passed on to the new owner. The month-to-month tenancy included the rent of \$450.00 that was payable on the first of each month. The Tenant paid and the Landlord currently holds a security deposit in the amount of \$225.00.

Landlord Evidence:

The Landlord provided evidence that indicated that the management of the residential property conducted room inspections in January 2018. In a letter to the Tenant, dated January 7, 2018, the Landlord stated that the Tenant's rental unit had excessive combustibles and provided guidelines to the Tenant for corrections in accordance with local Fire Department By-Laws.

In a letter, dated April 6, 2018, the Landlord advised the Tenant that as a result of responding to the Tenant's concerns about cockroaches and bedbugs, the Pest Control company was unable to treat the unit due to the condition of the rental unit. The Landlord provided guidelines to the Tenant and advised for safety reasons, the rental unit door must open completely; there must be a clear path to the window; clutter should not be more than 4 feet high; and, clutter should not be more than 2 feet from any wall. The Landlord also warned the Tenant that the Fire Marshal may be attending and could issue a "Do Not Occupy" Order.

As a result of the Tenant failing to respond to the previous letters, the Landlord served a One Month Notice to End Tenancy for Cause, dated June 13, 2018 (the "Notice"), to the Tenant on June 14, 2018 by taping it to the front door of the rental unit. The effective vacate date on the Notice was for July 31, 2018. The reason the Landlord issued the Notice, as noted on the second page, was that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

On June 14, 2018, the Landlord posted a Notice to Enter Premises on the Tenant's rental unit to advise that the Final Inspection for excessive combustibles was scheduled for June 18, 2018.

On June 18, 2018, the Landlord attended the rental unit and conducted an inspection. As a result of the inspection, the Landlord sent a letter, dated June 20, 2018, to the

Tenant noting that the amount of excessive combustibles (clutter) had almost doubled and that the condition of the rental unit was causing a pest infestation and posing a serious fire hazard. The Landlord had made contact with the local Fire Department and had requested a "Do Not Occupy" Order. The letter provided the Tenant the option to reduce the clutter by 75% within 24 hours.

The Tenant did not reduce any of the clutter and on July 6, 2018, the Fire Department conducted an inspection of the rental unit. The inspection revealed an accumulation of excessive combustibles throughout and furthermore, a compromised and/or restricted means of egress from the unit, that, in the opinion of the Fire Chief, has created a condition in the rental unit which endangers life and poses a risk of injury or loss by fire. The Fire Department subsequently issued an Order to the Tenant to immediately reduce the amount of combustibles by 75% and to clear and maintain a means of egress from the rental unit.

The Tenant did not comply with the Fire Department Order and as the Landlord did not believe the Tenant would be vacating the rental unit in accordance with the Notice, applied to the Residential Tenancy Branch for an Early Termination of Tenancy and Order of Possession under the Act on July 25, 2018.

On the date of this hearing, the Tenant was still living in the rental unit and the Landlord requested an Order of Possession based on the concern that the Tenant has not taken any action, nor responded in a positive way to any of the warning letters, and is still seriously jeopardizing the health and safety of other occupants in the residential property.

After listening to the Tenant's testimony, the Landlord sympathized with the Tenant's health concerns and physical limitations and acknowledged that fact that the Tenant now had an advocate to assist him with finding new accommodations. The Landlord is very concerned about the safety risks that are still present; however, did state that if an Order of Possession was issued, that it could be for the end of September 2018 to allow the Tenant some time to find new accommodations.

Tenant's Evidence:

The Tenant testified that he received the Notice on June 14, 2018 and did not dispute the Notice. He stated that he had been trying to get storage for his belongings for months, but can't find storage that he can afford. The Tenant has mental and physical limitations that have affected his ability to clean out his rental unit and to look for new accommodations. The Tenant has found an advocate to assist him with his situation and to help him find new accommodations.

Analysis

Section 56 authorizes a Landlord to make an Application for Dispute Resolution to request an Order ending a tenancy earlier than if ended under Section 47 (Landlord's Notice for Cause) and granting the Landlord an Order of Possession in respect of the rental unit. An Arbitrator may make an Order specifying an earlier date on which a tenancy ends if satisfied the Tenant has seriously jeopardized the health or safety of another occupant; and it would be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for a notice to end the tenancy under Section 47 to take effect.

I accept the Landlord's undisputed testimony and evidence that the clutter in the Tenant's apartment is not only a fire and egress hazard, but also a major hindrance in treating a pest problem that could affect other tenants in the residential property. As a result, I find that the condition of the Tenant's rental unit does seriously jeopardize the health and safety for both the Tenant himself, as well as other occupants in the residential property, contrary to Sections 32, 47 and 56 of the Act.

Section 56 authorizes me to issue an Order of Possession for the rental unit, that is earlier than the date on which the tenancy would be ended under Section 47. Although, I am not making findings on the validity of the Notice, I do note that the Tenant chose not to dispute the Notice and that the effective vacancy date of July 31, 2018, has passed. Regardless, the Landlord has provided the Tenant some leeway and has consented to an Order of Possession that would be effective for the end of September 2018. As a result of the above testimony, evidence and findings, I authorize an Order of Possession for the rental unit with the effective date of September 30, 2018, at 1:00 p.m., in accordance with Section 56 of the Act.

As the Landlord's Application has merit, I find that the Landlord has established a monetary claim and should be reimbursed for the filing fee, in accordance with Section 72 of the Act.

Conclusion

Pursuant to Section 56 of the Act, I am granting the Landlord an Order of Possession to be effective on September 30, 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.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep \$100.00 of the Tenant's security deposit, as compensation for the filing fee.

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 10, 2018

Residential Tenancy Branch