



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D. BONNIS & SONS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the *Act*) for:

- an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*, and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend the hearing. The tenant's agent, who is the tenant's adult son and an occupant of the rental unit, attended on behalf of the tenant. The landlord's agent attended on behalf of the corporate landlord. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Documents

The landlord submitted into evidence a copy of the One Month Notice to End Tenancy for Cause (One Month Notice) dated August 16, 2018, which the landlord's agent testified that the landlord served on the tenant by Canada Post registered mail on August 16, 2018. The landlord submitted into evidence a copy of the Canada Post registered mail receipt with the tracking number (noted on the cover sheet of this decision), and a copy of the tracking report, which indicated that the One Month Notice document was "unclaimed" by the tenant and returned to the landlord.

The landlord's agent testified that the landlord served the tenant with the application for this dispute resolution, including the notice of this hearing, by Canada Post registered mail on September 6, 2018. The landlord submitted into evidence a copy of the Canada

Post registered mail receipt with the tracking number (noted on the cover sheet of this decision), and a copy of the tracking report, which indicated that the Notice of Hearing documents were “unclaimed” by the tenant and returned to the landlord.

The landlord’s agent testified that the landlord served the tenant with their evidentiary materials for this dispute by Canada Post registered mail on October 1, 2018. During the hearing, the landlord’s agent provided the Canada Post registered mail tracking number (noted on the cover sheet of this decision), and stated that he verified from the tracking report that the evidence was signed for as received by the tenant on October 15, 2018.

The tenant’s agent testified that the tenant was out of the country from May 28, 2018 to October 13, 2018 and never received the One Month Notice nor the Notice of Hearing documents. The tenant’s agent confirmed that the tenant received the landlord’s evidence on October 15, 2018. As only the landlord’s evidence was in the package received by the tenant, the tenant’s agent stated that on October 17, 2018 he attended at the Residential Tenancy Branch on behalf of the tenant to obtain information about the landlord’s application and the telephone access code for this hearing.

The tenant’s agent further testified that he filed an Application for Dispute Resolution (file number noted on cover sheet of this decision) on October 17, 2018 to dispute the landlord’s One Month Notice and to request an Order for the landlord to comply with the *Act*, regulations or tenancy agreement and an Order for the landlord to complete emergency repairs to the rental unit as they currently do not have a stove or a sink in the kitchen.

Both parties confirmed that the landlord’s agent and the tenant’s agent communicated by telephone in early September 2018 regarding the service of the notice of hearing documents. The landlord’s agent testified that he confirmed the tenant’s agent remained in communication with the tenant while she was out of country, and that he explained to the tenant’s agent the need to obtain authorization in writing from the tenant allowing the landlord to send the tenant’s documents to the tenant’s agent in her absence.

The tenant’s agent testified that his mother is elderly, not technologically savvy, and as such she was not able to send any authorization while she was out of the country, therefore the tenant’s agent stated that he was unable to pick up the registered mail documents sent to his mother, who is the tenant, or to provide the landlord with

authorization from the tenant, so that the landlord could send the documents to the tenant's agent in his name.

Section 71 of the *Act* allows an arbitrator to determine a document was sufficiently served for the purposes of the *Act* on a date specified by the arbitrator. In this matter, I find that, according to the testimony of the tenant's agent, the tenant received the landlord's evidence pertaining to this dispute on October 15, 2018. Therefore, the tenant had an opportunity on that day to contact the landlord to request the details pertaining to the dispute and the scheduled hearing. As such, I deem the tenant served on October 15, 2018 with the landlord's Notice of Dispute Resolution and the landlord's One Month Notice.

Both parties agreed in the hearing to allow the tenant to bring forward the tenant's application to cancel the landlord's One Month Notice to be addressed at this hearing.

Therefore, in the hearing, I advised the parties that only the tenant's application to cancel the landlord's One Month Notice was being joined as a cross-application to the landlord's application seeking an Order of Possession on the basis of the One Month Notice. The tenant's other claims pertaining to the Order for the landlord to comply with the *Act*, regulations or tenancy agreement, and the Order for the landlord to complete emergency repairs, were set aside at this time, to be heard at the scheduled November 27, 2018 hearing. The tenant's agent made reference to evidence submitted by the tenant for the November hearing, however, I note that there was no evidence submitted by the tenant for this hearing before me at the time of the hearing.

Given the fact that this was a seventeen-year tenancy, the parties were also provided an opportunity to discuss the issues and resolve them through mutual agreement. Despite a discussion between the participants of possible options, they were unable to reach mutual agreement in this dispute. Therefore, the parties proceeded to provide their testimony and evidence for an arbitrated decision in this dispute.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. Both parties confirmed the following information pertaining to the tenancy agreement:

- This tenancy began in August 2001 as a one-year fixed-term tenancy agreement, which converted to a month-to-month tenancy at the end of the fixed-term.
- Monthly rent of \$1,450.00 is payable on the first of the month.
- A security deposit of \$500.00 was paid by the tenant at the beginning of the tenancy and continues to be held by the landlord.

The landlord submitted a copy of the One Month Notice dated August 13, 2018 into evidence, which states an effective move-out date of September 30, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

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 or property.

I note that the landlord has provided the following details regarding these reasons to end tenancy in the "Details of Cause" section provided on the form:

Tenant or person permitted by the tenant caused a fire in the unit which caused significant damage to the unit and other units. This includes fire, smoke and water damage which has cause other to have to vacate. Significant repairs are required and the unit in [sic] not safe for occupancy.

As explained in the Preliminary Issues section of this decision, I have deemed that the tenant was served with the landlord's One Month Notice on October 15, 2018, and therefore, I find that the tenant had 10 days from that date to file an application to

dispute the notice. The tenant's agent testified that the tenant filed an application on October 17, 2018 to dispute the notice, and that the hearing for that dispute was scheduled for a date in November 2018. However, the landlord consented to bring forward the tenant's application to dispute the One Month Notice to be heard as a cross-application at the current hearing.

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*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Both parties confirmed that on August 1, 2018, there was a fire in the tenant's rental unit. The tenant's agent, who is the tenant's son and an occupant of the rental unit, testified that he had left a deep fryer on the stovetop and forgot to turn the burner off. The tenant's agent fell asleep and as a result, a grease fire started on the stove. The fire sprinkler system engaged in response to the fire and smoke, resulting in significant water damage.

The landlord submitted into evidence an email from a neighbouring resident in the rental building explaining the events of discovering the fire. It was this resident who smelled something burning, saw smoke coming from the tenant's rental unit and began banging on the tenant's door. The neighbouring resident further notes that he was banging on the door for five to 10 minutes before the tenant's agent answered the door, stating he had been asleep. The neighbouring resident wrote that "the apartment was completely black in smoke" and "totally soaked from the water sprinklers". Another resident called 911, the fire department attended, and the building was evacuated.

The landlord's agent testified that the landlord is seeking to end the tenancy due to the tenant's agent, who resides as an occupant in the tenant's rental unit, causing a kitchen fire resulting in extraordinary damage, as well as putting the landlord's property at significant risk, jeopardizing the health and safety of other residents of the building, and

causing the occupant of another rental unit in the building to move out due to the disturbance related to extensive repairs to their rental unit.

In support of the landlord's claim, the landlord submitted into documentary evidence a 31-page scope of work and cost estimate from a professional restoration company providing detailed information regarding the estimated \$22,305.00 in costs for both the emergency water extraction work and full restoration repairs due to the fire/smoke/water damage to the tenant's rental unit and three rental units located on the floor below the tenant's rental unit which were affected as a result of the water damage from the sprinklers. The landlord's agent further testified that the occupants of the rental unit below the tenant's rental unit gave notice to end their tenancy as a result of the damage to their rental unit. Therefore, the landlord will incur the costs of re-renting this unit as a result of the damage caused by the fire. The landlord's agent confirmed that the landlord has made an insurance claim to mitigate the costs of the damage, resulting in a \$5,000.00 deductible to be paid by the landlord and anticipated increased insurance premiums going forward.

The landlord also submitted approximately 10 pages of photographic evidence documenting the damage to the tenant's rental unit as well as the rental units below the tenant's rental unit, and what appears to be at least an inch of water in the hallway as a result of the sprinkler response to the fire.

The tenant's agent stated that consideration should be given to the fact that the fire was not intentionally set but rather an accident. The tenant's agent confirmed that he fell asleep leaving a stove burner on with a deep fryer left on the stove. He further stated that the majority of the damage was caused by water from the sprinkler system which activated in response to the fire, not the actual fire or smoke. The tenant's agent stated that he did not feel that substantial renovation was required to the tenant's rental unit and that the repairs do not require vacant possession. The tenant's agent submits that the landlord has an ulterior motive and is attempting to "renovict" the tenant as the tenant has resided in the rental unit for many years.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I have explained in the Preliminary Issues section of this decision, that pursuant to my authority under section 71 of the *Act*, I have deemed the tenant served with the One Month Notice on October 15, 2018. As such, given that the tenant filed an application to dispute the notice on October 17, 2018, I find that the tenant has met the 10-day time limit for dispute provided by section 47(4) of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

Pursuant to section 53 of the *Act*, as I have found that the tenant was served with the One Month Notice on October 15, 2018, the effective date of the notice automatically corrects to the earliest effective date allowed by the *Act*, which in this case is November 30, 2018.

Under section 32(3) of the *Act*, a tenant is responsible for any repairs to the rental unit beyond normal wear and tear. Clearly, in this instance, the damage caused as a result of the fire was beyond “normal wear and tear”. Under section 47(1)(f), a landlord can provide a notice to terminate a tenancy if the tenant causes extraordinary damage to a rental unit.

The *Act* specifically states that the damage must be caused by the tenant or a person permitted on the property by the tenant. In this instance, I find that the parties agree that the source of the smoke and water sprinkler damage was a grease fire as a result of the tenant’s agent accidentally leaving a stove burner on and then falling asleep.

There is no suggestion that the tenant deliberately left the stove burner on. Nevertheless, the origin of the damage was the tenant’s agent’s neglect leaving the stove burner on and then falling asleep.

In determining whether or not the damage caused by the tenant's agent is "extraordinary", I have considered the test for extraordinary, which Black's Law Dictionary, 6th edition, defines, in part, as:

Out of the ordinary; exceeding the usual, average, or normal measure or degree;...not usual,...remarkable; uncommon...

Based on the photographic evidence and repair cost estimates before me, I find that the damage to the rental unit caused by the fire due to the tenant's agent's negligence meets the definition of "extraordinary" for the following reasons:

- The emergency and restoration costs of the damage total over \$22,300.00.
- The landlord is responsible for a \$5,000.00 insurance deductible and will face increased insurance premiums going forward.
- The restoration company project plan indicates that the tenant's rental unit, as well as three other rental units were affected due to the fire or resulting water damage due to the sprinkler response.
- Residents in the rental unit below the tenant served notice to end their tenancy as a result of the extensive repairs required to their rental unit.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord has proven the grounds for the notice to end tenancy. Therefore, the One Month Notice is of full force and effect, and the tenant's application is dismissed without leave to reapply.

Section 55(1) of the *Act* states that if a tenant makes an application to dispute a notice the arbitrator must grant an Order of Possession if the notice complies with the *Act* and the tenant's application is dismissed. As I have made a finding that the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice is dismissed, the landlord must be granted an Order of Possession. This Order of Possession will be effective, after service upon the tenant by the landlord, on the corrected effective vacancy date of the One Month Notice, which is November 30, 2018.

As the landlord was successful in their application, the landlord is entitled to recover the cost of the filing fee for the application from the tenant. I order that the landlord retain \$100.00 from the security deposit in full satisfaction of the recovery of the filing fee.

Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective on November 30, 2018. The landlord must serve this Order on the tenant as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order that the landlord retain \$100.00 from the security deposit in satisfaction of the recovery of the filing fee from the tenant.

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 30, 2018

Residential Tenancy Branch