



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTRAL PARK CITIZEN SOCIETY C/O FIRST SERVICE RESIDENTIAL
BC
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	For the Landlord:	OPC, FFL
	For the Tenant:	CNC, FFT

Introduction

This decision is in respect of the landlord's and tenant's applications for dispute resolution under the *Residential Tenancy Act* (the "Act") made on November 22, 2018 and November 5, 2018, respectively.

The landlord seeks an order of possession for cause, pursuant to sections 47 and 55 of the Act, and a monetary order for recovery of the filing fee pursuant to section 72 of the Act.

The tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47(4) of the Act, and a monetary order for recovery of the filing fee pursuant to section 72 of the Act.

A dispute resolution hearing was convened at 9:30 A.M. on December 11, 2018, and two agents for the landlord were present. The tenant and her son joined the hearing at 9:34 A.M. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues of service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession for cause?
3. Is the tenant entitled to a monetary order for recovery of the filing fee?
4. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord's agent (hereafter the "landlord" for brevity) testified and confirmed that the tenancy commenced on September 1, 2002, and that current monthly rent is \$456.00. There is a security deposit in the amount of \$179.00. A copy of the tenancy agreement was submitted into evidence.

The landlord testified that they have been working with the tenant since May 2016 to correct situation of hoarding which has lead to fire and safety issues. The hoarding is such that firefighter personnel would not have ready access to the rental unit should a fire occur. "Access to the suite is impeded," explained the landlord. This puts not only the property at risk, but also places the tenant and her neighbours in the building at severe risk. There is, as described by the landlord, "no room to walk, the bathroom is full [of property]" and there is also a tripping hazard. This is particularly high given that the tenant recently had knee surgery.

The tenant has received some level of home support and mental health support over the years, and the landlord has given the tenant ample opportunity to clean up the rental unit (I note that the landlord submitted several letters to the tenant regarding the hoarding issue and the fire and safety risks that this has created). But, to no avail.

On October 25, 2018, the landlord issued the Notice and served it in person on the tenant. The Notice indicated an effective end of tenancy date of November 30, 2018. A copy of the Notice was submitted into evidence.

The tenant's son, who acted as his mother's advocate, testified that his mother has had serious problems with stuff (i.e., hoarding) her whole life. She has also waited about ten years for knee surgery, which has exacerbated her hoarding issue. He said that they have talked to a moving company and have looked at storage solutions, however, he noted that given the quantity of property they will need "quite a bit of time to it out." Even then, he is unsure of whether that will be sufficient for the landlord's purposes. His mother, who is 77 years of age, is not physically or mentally capable of dealing with the issue. Neither the son nor the tenant at any point disputed the landlord's position and argument that the hoarding issue puts the landlord's property at significant risk.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. The Notice issued by the landlord on October 25, 2018, indicates two grounds for the tenancy being ended: (1) the tenant has put the landlord's property at significant risk; and, (2) there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. These are grounds for ending a tenancy under sections 47(1)(d)(iii) and 47(1)(h) of the Act.

In this case, the landlord argued and submitted evidence consisting of over a dozen letters spanning the years 2011 to present, in which multiple issues of cluttering, blocking of doors, items blocking access through the balcony, and so forth are detailed. The correspondence contains instructions to the tenant and expectations of compliance, and details regarding why the hoarding issue is a fire and safety risk. Neither the tenant nor her son disputed the landlord's submissions on the grounds for which the Notice was issued. The central thesis of their submission is that this is an ongoing issue with the tenant and that they are in a "rock and a hard place" in terms of solutions.

Taking into consideration all the oral, and undisputed testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving on a balance of probabilities the grounds on which the Notice was issued. As such, I grant the landlord an order of possession for cause.

I further grant the landlord a monetary award of \$100.00 for recovery of the filing fee. To that end I order that the landlord retain \$100.00 of the tenant's security deposit in full satisfaction of that award.

Conclusion

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 11, 2018

Residential Tenancy Branch