



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated November 26, 2018 and received by the tenant on November 27, 2018..

The tenant was not able to attend the original hearing date and the matter was adjourned to today.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant given justification for the ending of this tenancy under any of the grounds stated in the Notice?

Background and Evidence

The rental unit is a three bedroom (or two bedroom “plus den”) lower portion of a duplex. The upper portion is rented to others.

There is a written tenancy agreement though it was not submitted as evidence. The tenancy started in June 2017. The monthly rent is currently \$950.00. The landlord holds a \$475.00 security deposit.

The Notice claims that the tenant or a person permitted on the residential property by the tenant has either i) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or b) put the landlord's property at significant risk. Further, the Notice claims that the tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Proof of any of the three grounds of cause listed, form a valid ground for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the "Act").

On October 26, 2018 the landlord wrote to the tenant on the subject of "Congestion+fire/health/safety hazards URGENT" requesting she remove the bulk of excess goods in the rental unit as they pose fire, health and safety hazards for her and the tenant above. The letter points out that the tenant's belongings literally fill at least the second bedroom, half the hallway, major portions of the kitchen/dining and living rooms and probably her bedroom and the back room as well. The letter noted the tenant had full use of a storage shed on the property and could put belongings there. The letter described the situation as urgent.

The landlord adduced a number of photographs of the premises and rental unit, all taken December 1. The photos show the rental unit to contain a great deal of the tenant's personal possessions. In regard to one bedroom it would not be reasonably possible to enter it. The door to the room is open but belongings are so stacked in the room that they appear to be cascading out. It would not be possible to close the door. The landlord says the objects fill the room and cover the baseboard heater in it. In another bedroom the floor appears completely covered with bags and various items and there are fabric covered items lying against and on top of the baseboard heater.

The landlord testifies that the tenant is not providing electricity to the home. The rental unit has electric heat (baseboard heating) and an electric hot water heater. He says the tenant was informed by BC Hydro that her electricity would be turned off and it was turned off October 29, 2018. She allowed the premises to go unheated during the months of November and at least part of December.

At first the tenant ran an extension cord to her rental unit from the upper unit to provide power for a portable heater(s) but when that was discovered it was disconnected. She then used a portable generator. Neither method would provide the special power needed to operate a baseboard heater

It appears that the tenant arranged for Hydro under another person's name in December but the landlord contacted Hydro relaying his concern that the state of the premises was such that turning power back on could create a fire hazard. For that or other reasons, possibly relating to the identity of the new person registered to the account, BC Hydro shut the power off again.

Mr. W.O. testified for the tenant. He describes himself as the tenant's boyfriend and says he works out of town but stays at this rental unit perhaps two days out of each week. He says he is six feet tall and 240 pounds in weight and has no difficulty moving throughout the rental unit so it is not cluttered. He says the tenant, who is 36 years old, has mobility problems and has five children, none of whom have been living with her for the past while, though one, age 16 will be moving back in. He says the power is back on now.

The tenant testifies that she does not think the landlord's humidity readings are correct. She says the items in the rental unit are not junk but are the belongings related to the fact that she has had five children. She indicates that she has a degenerative disc problem in her back and as a result, loses feeling in her legs.

She says the landlord assaulted her. The landlord denies it.

Analysis

The validity of the Notice in question rises or falls on the state of affairs as they existed when the Notice was issued: November 26. Either there was good cause to end the tenancy on that date or there was not. Events happening afterward are not directly relevant to that question.

After considering all the evidence I find that the tenant has put the landlord's property at significant risk in two ways. First, she has failed to maintain proper heat in the premises in a place located in the southern interior of the province during a cold part of the year. Because of that the landlord has run the risk of water pipes freezing. Further, the accumulation of objects piled or stacked in depth against the walls of the home, when coupled with a lack of proper heating put the landlord's property, namely the walls and floor, at significant risk of developing mould and mildew. Second, the tenant has clearly overloaded rooms with her belongings, and by doing so she has closed off normal means of egress during an emergency and has created a fire hazard by the storage of obviously flammable items directly beside and on top of baseboards.

She was clearly advised to attend to these deficiencies in October and failed to do so. Whether or not such was a “material breach” of her tenancy agreement, it emphasizes the point that she had clear warning of the risks her conduct was exposing the landlord (and the upstairs tenants) to. Clearing the home of these belongings may well have been difficult for the tenant, with her disability, but no reason was offered why Mr. W.O., a sturdy man, would not have attended to it.

Conclusion

The tenant has put the landlord’s property at significant risk. The Notice to End Tenancy was a proper Notice. It has caused this tenancy to end December 31, 2018. The tenant’s application to cancel it is dismissed. Her claim to restrict landlord access is dismissed. Pursuant to s. 55 of the *Act*, the landlord will have an order of possession.

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: January 09, 2019

Residential Tenancy Branch