



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause dated December 11, 2018 ("the 1 Month Notice"), among several other issues.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing originally convened on January 25, 2019 and on that date arguments were made with respect to whether the landlord was in a position to issue the 1 Month Notice since the matters had been raised before and decisions made. I issued orders to the parties on January 25, 2019 and adjourned the hearing. An Interim Decision was issued on January 25, 2019 and should be read in conjunction with this decision.

On January 28, 2019 the landlord submitted for my consideration photographs of the tenant's rental unit that were taken on January 25, 2019. I confirmed that the landlord served these photographs upon the tenant. The tenant took a video of his rental unit on January 28, 2019 and took still photographs of his unit on January 30, 2019 and February 20, 2019 which were submitted for my consideration. I confirmed that the landlord received the tenant's video and photographs. I have admitted the additional photographs and video provided by the parties during the period of adjournment and considered them in making my decision.

After confirming service of evidence, I proceeded to determine the parties' respective positions as to whether the condition of the rental unit remains the same, has improved or worsened since the landlord took photographs on and before November 9, 2018. The landlord made arguments that the condition of the rental unit has largely remained

the same and continues to pose a significant risk to the landlord's property and seriously jeopardize the health and safety of other occupants or the landlord's agents. The tenant maintained his position that the condition of the rental unit has improved.

Given the serious nature of the landlord's allegations, and in particular the submission that health, safety and fire hazards existed and continue to persist due to the condition of the rental unit, I decided it is appropriate and just to use my discretion in applying the principle of res judicata and that I would consider whether the tenancy should end based on the 1 Month Notice dated December 11, 2018.

I proceeded to hear the landlord's arguments in support of its position that the tenancy should end. The tenant made a few brief submissions and the tenant's advocate cross examined the landlord's agents. The hearing time allotted for the March 14, 2019 hearing expired and the tenant's advocate was still cross-examining the landlord's agents. I posed to the parties the option of adjourning the hearing once again or having me make the decision based on the evidence I had been provided thus far, even though that would mean forgoing calling of witnesses the parties had standing by. Both parties were agreeable to having me make the decision based on what I had been provided thus far. The parties made closing arguments and the teleconference call was ended.

It should be noted that during the March 14, 2019 hearing the landlord did not make any arguments with respect to the depositing a bag of hypodermic needles in the landlord's office even though it was raised as an issue during the January 25, 2019 hearing. I have not considered that issue further since an Arbitrator already reached a final and binding conclusion with respect to that issue in a decision issued on December 7, 2018 (file number provided on cover page of this decision) and such actions have not recurred since then. In the December 7, 2018 decision the Arbitrator wrote, in part:

As regards the incident of a cosmetic bag containing hypodermics being left in the mail slot of the manager, based on the testimonies I find that this was an isolated incident. I do not find the landlord's conclusion that this was a knowing and malicious attack to be supported in the evidence. There are inherent risks to health with handling and disposing of hypodermics. While the tenant's act of leaving the cosmetic bag with the manager without noting its contents may not have been the most appropriate manner of disposing of hypodermics I do not find that it was a serious jeopardy to health and safety.

[My emphasis underlined]

I have severed the other remedies sought by the tenant in his Application pursuant to the discretion afforded me under rule 2.3 of the rules of Procedure. The tenant is at liberty to pursue those other remedies if he so chooses by making another Application for dispute Resolution.

Issue(s) to be Decided

Is the tenant continuing to put the landlord's property at significant risk or continuing to seriously jeopardize the health and safety of other occupants or the landlord's agent; and, should the 1 Month Notice to End Tenancy for Cause issued on December 11, 2018 be cancelled or upheld?

Background and Evidence

The tenancy started on November 1, 2014. The rental unit is a one-bedroom apartment with a patio and fenced yard space on the ground floor of a multiple unit rental building.

The landlord had taken photographs of the rental unit on various dates up to and including November 9, 2018. The landlord had supplied the Residential Tenancy Branch with those photographs prior to its previous hearing held on November 27, 2018 in an effort to have the October 18, 2018 1 Month Notice upheld. The landlord's photographs were not admitted for that proceeding and the landlord relied upon those same photographs in issuing another 1 Month Notice dated December 11, 2018 without performing another inspection of the rental unit.

The subject 1 Month Notice to End Tenancy for cause issued December 11, 2018 provides the following reasons for ending the tenancy:

REASONS FOR THIS ONE MONTH NOTICE TO END TENANCY (check all boxes that apply):	
<input type="checkbox"/>	Tenant is repeatedly late paying rent.
<input type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/>	put the landlord's property at significant risk.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
<input checked="" type="checkbox"/>	damage the landlord's property.
<input type="checkbox"/>	adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
<input checked="" type="checkbox"/>	jeopardize a lawful right or interest of another occupant or the landlord.
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input type="checkbox"/>	Tenant has not done required repairs of damage to the unit/site.
<input type="checkbox"/>	Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
<input type="checkbox"/>	Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.
<input type="checkbox"/>	Rental unit/site must be vacated to comply with a government order.
<input type="checkbox"/>	Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.
<input type="checkbox"/>	Tenant has assigned or sublet the rental unit/site without landlord's written consent.
<input type="checkbox"/>	<i>Residential Tenancy Act only:</i> security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.
<input type="checkbox"/>	Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.
<input type="checkbox"/>	Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
DETAILS OF CAUSE(S): Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).	
The conditions of the suite pose a serious risk for the health and safety of staff members who are required to access the suite for repairs. The suite also poses a severe fire hazard because of the accumulation of debris. Tenant discarded used IV needles through resident manager's mail-slot, endangering her life. Tenant is collecting garbage and debris which is putting the suite, building and common areas in jeopardy and at risk of bugs and rodents. Tenant's verbal abuse and use of harassing language towards staff.	

The landlord submitted that the rental unit likely remained in the same condition as November 9, 2018 when the December 11, 2018 1 Month Notice was issued; however, the tenant opposed that position, claiming he had been working with an organizer and the condition had improved greatly since the landlord had inspected the unit on November 9, 2018 and the landlord's photographs had been taken.

As authorized and ordered in the Interim Decision, the landlord provided photographs taken of the rental unit on January 25, 2019. The landlord submitted that the condition of the rental unit on January 25, 2019 is essentially the same as it was on November 9, 2018, with an excessive amount of clutter and very dirty areas, including the toilet. The landlord pointed out that the tenant was seen coming home hours before the landlord's photographs were taken and had removed possessions from the unit in that time as the tenant was seen on the video footage removing boxes and bags from the unit.

The landlord's agent also entered the rental unit on February 28, 2019, without notice to the tenant, to turn off the tap that was left running in the tenant's patio as the landlord considered this to be an emergency situation. The landlord testified that she slipped and nearly fell due to the debris on the living room floor.

The landlord is of the position that the lack of cleanliness is a hazard for its agents and contractors; pests may be attracted to the rental unit due to its condition; and, that people who tend to live like that are unlikely to report pests to the landlord based on the landlord's experience with other tenants and in such cases pests get out of control and migrate to other units.

The tenant testified that until more recently he was of the belief he could maintain the unit in a manner acceptable to him but the tenant has since learned that he has an obligation under the Act to maintain the unit. The tenant is of the position that he has improved the condition of the unit by enlisting the services of an organizer and he has cleaned the unit.

To demonstrate the improvement to the rental unit the tenant pointed to the video he took January 28, 2019 and photographs taken January 30, 2019 and February 20, 2019.

The tenant's advocate argued that the video and photographs demonstrate the condition in which the tenant maintains the unit has improved and continues to improve. The tenant endeavours to get the unit in better condition and stay on top of it so that it does not revert back to its former condition. Although the unit is not in pristine condition it falls short of the threshold necessary to conclude the tenant is putting the landlord's property at significant risk or creating a serious health and safety hazard to other occupants or the landlord's agents.

The landlord acknowledged that the video and photographs taken by the tenant appear to show the rental unit cleaner and less cluttered than those taken by the landlord and that the tenant's more recent photographs taken by the tenant would appear to show a rental unit in acceptable condition; however, the unit did not look that good when the landlord more recently on February 28, 2019. The landlord pointed out that the tenant's photographs demonstrate the tenant is capable of cleaning up but that he does not maintain that level of cleanliness for long.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

There are multiple reasons indicated on the 1 Month Notice before me including allegations that the tenant has conducted himself illegally; however, I was not provided evidence to suggest the tenant's activities are illegal and I do not consider those stated reasons further. Also, the notice indicates the tenant has caused extraordinary damage to the property; however, the details of cause on the subject notice do not elaborate on what the landlord considers to be extraordinary damage caused by the tenant. Nor, did the landlord submit testimony or evidence concerning extraordinary damage that has been caused and I do not end the tenancy for extraordinary damage.

From the information contained in the 1 Month Notice and evidence put forth by the landlord it is clear that the state of cleanliness, or lack thereof, and accumulation of possessions and garbage are the reasons the landlord seeks to end the tenancy and the remainder of this analysis focuses on those issues.

Section 32 of the Act provides for repair and maintenance obligations of a landlord and a tenant. Under section 32(2) of the Act a tenant is required to:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Since the tenant has a patio and fenced yard space he has use of, I find that under section 32(2) the tenant is also required to maintain the patio and yard space so that is reasonably clean and sanitary in addition to the inside of the rental unit.

When I look at the photographs taken on November 9, 2018 by the landlord's health and safety officer, it is very apparent that the tenant has not cleaned most areas of the rental unit in quite some time. The stove top is caked in grease and/or food splatter; the tub has an accumulation of grime and mildew; the toilet bowl is brown instead of white below the water line; and, the bathroom sink is also very dirty. In addition there appears to be a large amount of alcohol and soda cans accumulated on the patio, among other things. I accept that the condition of the rental unit depicted in these photographs demonstrate a rental unit that is not being maintained by the tenant in a manner that complies with his obligation under section 32 of the Act.

It is apparent to me that the evidence produced on November 9, 2018 was intended to be used as evidence for the November 27, 2018 hearing. However, November 9, 2018 was the last time the landlord had entered the unit and observed its condition before issuing the December 11, 2018 1 Month Notice since the landlord was unsuccessful in

proving the tenancy should end on November 27, 2018 and December 7, 2018. The parties were in dispute as to its condition in December 2018 and I find it unclear since the landlord's photographs were taken more than a month prior to issuance of the 1 Month Notice. Accordingly, I turn to the photographic evidence gathered by the landlord on January 25, 2019.

The landlord's photographs of January 25, 2019 demonstrate a significant amount of clutter and possessions in the rental unit; however, it appears as though there is a clear path through the living space. There is mildew where the tub and tub surround meet. The toilet bowl, bathroom sink and tub are in need of cleaning. The stove top appears much cleaner than it did on November 9, 2018. The barbeque grill is dirty and there are a number of cans and bottles stored on the patio. While the rental unit and patio area are in need of cleaning and de-cluttering, I am of the view that the state of the unit on January 25, 2019 does not rise to the level of finding the landlord's property is at significant risk or that the health and safety of other occupants or the landlord's agent's is in serious jeopardy.

When I look at the tenant's video and photographs taken after January 25, 2019 it is apparent to me that the tenant has been taking steps to improve the clutter or amount of possessions in his unit and improve the state of cleanliness.

In light of the above, I find on the balance of probabilities that the condition of the rental unit improved as put forth by the tenant and has not remained as bad as it was on and before November 9, 2018. Further, I am of the view that the condition of the rental unit, as seen in the landlord's January 25, 2019 photographs does not warrant the end of the tenancy. Therefore, I cancel the 1 Month Notice and the tenancy continues at this time.

While I accept that accumulation of excessive clutter and other attractants such as food may attract pests such as rodents or other bugs and the landlord has a concern that the tenant's actions, or lack thereof, may attract such pests, I do not see evidence that has not yet occurred or been proven.

Although I have cancelled the 1 Month Notice, I find it important that I recognize the hazards that arise when a tenant fails to meet his obligation under section 32(2) of the Act. I recognize that the accumulation of excessive clutter and food or other attractants may attract pests, including rodents, and left unchecked may become an infestation affecting other occupants and the landlord. I also appreciate that the accumulation of excessive clutter and possessions may pose a fire hazard and hazard to others entering the rental unit, including the landlord's agents and contractors. I also recognize the

unsanitary conditions may also pose a health hazard to other occupants and the landlord's agents and contractors.

I am optimistic that the tenant's improved cleaning and de-cluttering activity should serve to lessen that concern; however, in recognition that the tenant appears to have challenges recognizing and maintaining reasonable sanitary and cleanliness standards, pursuant to the authority afforded me under section 62 of the Act, I issue the following orders and authorizations with a view to avoiding these issues in the future.

I ORDER the TENANT:

1. To comply with section 32(2) of the Act from this point forward. This includes, but is not limited to the following:
 - a. Ensuring there is clear pathway to from each room of the rental unit that lead to both points of ingress and egress: the unit entry door and the patio door.
 - b. Ensure there is not a significant accumulation of mildew, grease, grime or debris on surfaces including the bathtub, toilet, sinks, fridge and stove.
 - c. Ensure garbage, recyclables and other debris is removed from the premises at regular and reasonable intervals so as not to attract pests.
2. To report any signs of pests in the rental unit or the tenant's patio and yard space immediately to the landlord.
3. When the landlord comes to inspect the rental unit, as authorized in the section below, and at any other lawful time, the tenant must not interfere with the landlord's inspection including acting in a hostile or aggressive manner or unreasonably limiting the time the landlord has to perform this task.

I AUTHORIZE the LANDLORD:

1. To inspect the rental unit to determine whether the tenant is complying with my orders to him every two weeks rather than the monthly limit imposed under section 29. The landlord is required to give the tenant a 24 hour written notice of entry to accomplish this.
2. Should the landlord determine the tenant is not maintaining the unit in a manner that complies with section 32(2) the landlord shall issue a written notice to the tenant with specific instruction as to what areas require attention and the date the landlord expects such action to be completed.

3. Should the tenant not comply with the landlord's written instructions as described above, the landlord may make another Application for Dispute Resolution to seek further remedy.

Although I have cancelled the 1 Month Notice as requested by the tenant, I make no award for the tenant to recover the filing fee from the landlord as I am of the view the tenant's conduct, actions, or lack thereof have contributed this this dispute. Rather, each party shall bear the costs they incurred to participate in this dispute.

Conclusion

The 1 Month Notice dated December 18, 2018 is cancelled and the tenancy continues at this time.

I have issued orders and authorizations to both parties in this decision.

I have made no award for recovery of the filing fee.

The other remedies sought by the tenant were severed from this Application and dismissed with 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 *Residential Tenancy Act*.

Dated: March 15, 2019

Residential Tenancy Branch