



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OLIVER KIWANIS SENIOR CITIZENS HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, MT, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To be allowed more time to make an application to cancel a notice to end tenancy; and
2. To cancel a One Month Notice to End Tenancy for Cause, issued on February 26, 2019 (the "Notice").

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and procedural matters

In this case, the tenant has applied for more time to make an application to dispute a notice to end tenancy; however, I am satisfied that the tenant made their application within the statutory time limit permitted under the Act. Therefore, I find it not necessary to consider this portion of the tenant's application.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on April 1, 2014. The tenant's portion of rent is determined by BC Housing.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on April 1, 2019.

The reason stated in the Notice was that the tenant has:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that they have had complaints about the tenant that bad smells are coming from their rental unit. The agent stated that they have spoken to the tenant about their responsibility to maintain the rental unit to reasonable standards.

The landlord's agent testified that they temporarily moved the tenant while they renovated the tenant's unit and at that time there were issue of fecal matter not properly disposed of. The agent stated that the floors, curtains and toilet were replaced and they are concerned that the tenant is causing damage.

The landlord's agent testified that after the tenant was returned to their unit they received a complaint from the maintenance person that they will not be going back to

the rental unit as the smell was unbearable. The agent stated that they did not enter the unit due to the smell.

The landlord's agent testified that there was an incident where the tenant had left fecal matter outside their door in the hallway, which they had to have cleaned up.

The tenant testified that they do not know what the landlord's is alleging in their rental unit. The tenant stated that they had an incident with irritable bowel syndrome and had an accident in the hallway. The tenant stated that they went into their rental unit and got cleaned up and when they went to clean up the mess in the hallway, it was already done by the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this case, I find the landlord has not provided sufficient evidence to support the Notice. The landlord did not attend the rental unit to determine the source of the smell or to determine if there were any damages to the unit. The landlord provided no photographs of the rental unit to support extraordinary damages.

While I accept there was some evidence of fecal issues prior to the rental unit being renovated; However, I am unable to determine if that issue continues due to lack of evidence.

I do accept that the tenant had an accident in the hallway, as they were unable to control their bowels, which is a medical issue. This alone is not sufficient to end the tenancy. Therefore, I find it appropriate to cancel the Notice.

However, I find it appropriate at this time to make the following orders as it may be that the tenant has medical issues that they are not dealing with in a reasonable manner, and it is within the tenant's control to do so, which was discussed at the hearing.

I authorize the landlord to inspect the rental unit, twice per month, to ensure the tenant is maintaining reasonable health and cleanliness of the premise. The landlord is required to provide to the tenant, in writing, any deficiencies that the tenant needs to be address to maintain **reasonable standards** of cleanliness.

I Order the tenant to comply with the instructions of the landlord. This order remains in place for 6 months should it be determined necessary by the landlord to preserve the tenancy.

The first inspection of the tenant's rental unit is to occur on **May 1, 2019 at 11:00am**. The tenant was informed of the date and time at the hearing. The landlord is required to provide to the tenant at least 24 hours of any subsequent inspections, in writing.

The tenant is cautioned that they **must** maintain reasonable health and cleanliness in the rental unit. Should the tenant fail to comply with the landlord's instructions, the landlord is at liberty to issue a new notice to end tenancy. A copy of this decision can be filed as evidence at any future hearing.

Based on the above, I grant the tenant's application and cancel the Notice. I find the tenancy will continue. The landlord's application for an order of possession is dismissed.

Conclusion

The tenant's application to cancel the Notice is granted. The tenancy will continue.

The landlord's application for an order of possession is dismissed.

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: May 1, 2019

Residential Tenancy Branch