



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 14, 2019 (the "Application"). The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause, dated March 5, 2019 (the "One Month Notice"), pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing and was assisted by I.C., a legal advocate. The Landlord was represented at the hearing by C.G., an agent, who was accompanied by G.E. and P.D., witnesses. The Tenant, C.G., G.E., and P.D. provided affirmed testimony.

On behalf of the Tenant I.C. testified the Application package was served on the Landlord by registered mail on March 18, 2019. The Landlord acknowledged receipt. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Landlord on March 23, 2019.

In addition, C.G. testified the Landlord's documentary evidence was served on the Tenant by registered mail on March 20, 2019. The Tenant denied receipt. However, in support, the Landlord provided a Canada Post registered mail receipt. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Landlord's documentary evidence is deemed to have been received by the Tenant on March 25, 2019.

No further issues were raised with respect to service or receipt of the above during the hearing. The parties were in attendance or were represented at the hearing, and were prepared to proceed. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began on November 1, 2014. Rent is currently due in the amount of \$745.00 per month. The Tenant paid a security deposit of \$350.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice. The Tenant confirmed receipt of the One Month Notice on March 5, 2019. The One Month Notice was issued on the following bases: Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, damage the Landlord's property; Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; Tenant has not done required repairs of damage to the unit/site; Tenant has breached a material term of the tenancy agreement that was not corrected in a reasonable time after written notice to do so. However, C.G. agreed the grounds of "illegal activity" were added in error and were not being pursued.

On behalf of the Landlord, C.G. testified that the “filthy” condition of the Tenant’s unit, and the Tenant’s activities in the rental unit, present a risk to other occupants in the rental property. C.G. advised that the Landlord is pursuing the order of possession reluctantly but that the Tenant, who is elderly and lives with “serious health issues”, is “over his head”. C.G. suggested the Tenant is no longer able to manage independently in the rental unit.

First, C.G. testified the Tenant smokes in the rental unit and allows cigarettes to fall onto the carpet. In support, the Landlord submitted photographs of an ashtray filled with cigarettes and of burn marks in the carpet. C.G. testified the Landlord is concerned about the risk of fire and the safety of all residents in the building, most of whom are also elderly.

In addition, C.G. testified the Tenant’s laundry frequently contains human feces, which gets deposited in the washing machine. C.G. testified that the washing machine used by the Tenant has had to be taken apart and cleaned on 2 occasions. In support, P.D. testified that he recently observed the Tenant doing laundry room and noted which machine was being used. He returned to check the condition of the machine a short time later and observed it contained feces.

In support of C.G.’s evidence regarding the general condition of the rental unit, G.E. testified that he attended the Tenant’s rental unit roughly 2 weeks ago to service a garburator. G.E. stated that he put carpet and cardboard onto the floor to avoid contact with what he believed to be feces, and had to drape the garburator with towels to avoid contact. G.E. advised that he wore surgical gloves during his visit.

The oral testimony provided by C.G., G.E., and P.D. was supported by photographs depicting the interior of the rental unit.

In reply, I.C. made submissions on behalf of the Tenant. I.C. stated the Tenant has a cleaner attend the rental unit once per month but acknowledged the cleaning is superficial. In addition, I.C. advised that dishwasher leaked. She also indicated that the carpet was stained but could be cleaned. I.C. also stated that the Tenant does not always use the same washing machine, as suggested by the Landlord, but uses whatever is available. The Tenant also submitted a number of photographs taken after it was cleaned in early April 2019.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the One Month Notice was issued on the bases identified above.

In addition, section 32 of the *Act* requires a Tenant to “maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.”

In this case, I find there is sufficient evidence before me to conclude, on a balance of probabilities, that the Tenant has seriously jeopardized the health or safety of lawful right of another occupant or the Landlord. Specifically, I find it is more likely than not that the Tenant has permitted feces to soil the rental unit and the laundry room, and that the Tenant presents a fire risk by permitting cigarettes or ash to fall to the floor of the rental unit.

In light of the above, I find the Tenant’s Application is dismissed and the One Month Notice is upheld. When a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the One Month Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective on May 31, 2019, at 1:00 p.m.

Conclusion

The Tenant’s Application is dismissed, without leave to reapply.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession. The order will be effective on May 31, 2019, at 1:00 p.m. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 7, 2019

Residential Tenancy Branch