Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ORANGEBRIDGE REALTY LTD
and W.B. McLAY INVESTMENTS LTD.

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated April 16, 2019 ("One Month Notice").

The Tenant, an agent for the Landlord ("Agent"), and a witness for the Landlord, D.B., ("Witness"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. During the hearing, the Agent provided the correct legal names of the Landlord and the property management company. I have adjusted the style of cause accordingly.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2017, with a monthly rent of $700.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of $350.00, and a pet damage deposit of $100.00. The Parties agreed that rental unit is a one bedroom and one bathroom manufactured home on private property that is not a manufactured home park. The Tenant does not own the manufactured home. Accordingly, I find that the *Residential Tenancy Act* applies to this tenancy.

The Landlord served the Tenant with a One Month Notice on April 16, 2019, by posting it on the rental unit door. The effective vacancy date on the One Month Notice is May 31, 2019. The Tenant applied to dispute the One Month Notice on April 17, 2019.

The grounds for the eviction set out on the One Month Notice are that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk. The Landlord explained the ground further by noting the following in the "Details of Cause" section of the document, as follows:

> Sewage back up as a result of paper towel and material similar to Lysol wipes from unit #7 blocking the flow of sewage to the city sewer pipe. This pipe is solely from [rental unit address]. The Owner has requested that the tenant pay for the clearing of this blockage, which occurred on February 27, 2019 and request for payment on Feb 28, 2019. Time and extension had [been] given.
>
> [reproduced as written]

The Agent's testimony in the hearing is that the Landlord paid for the rental unit's sewage pipes to be unblocked by a technician at a local plumbing company ("Technician"). The Agent submitted an invoice showing that the cost of the work was $192.15. The Agent and the Witness both independently testified that the Technician had the Tenant and her next door neighbour flush their toilets. The blockage only occurred when the Tenant flushed her toilet.
The Tenant said in the hearing that the Landlord did not provide proof that the backup

originated in her rental unit. She said there is a coffee shop and a community building "merely six feet from the same sewer clean out," and that the blockage could have come from one of these buildings. In response, the Agent said that she specifically asked the Technician if the blockage could have come from one of these buildings and that he said, "no, for that to have happened the visible backup would have backed up to the unit", which was not the case.

The Parties testified that there was some indication that the City was responsible for paying for clearing the blockage; the Agent said that the Landlord would be happy to rescind the One Month Notice if the responsibility lay in the City's actions or inactions. The Parties agreed that a representative from the City's Utilities Trades department (the "Representative") attended the residential property on April 16 and 17, 2019; the Landlord submitted email evidence from the City in this regard. In his emails, the Representative said that the Tenant had called the City to ask whether the cleanout in question was on the City's property or not. The Representative said that it "likely is the City's property. I wanted to be certain so I let her know myself or someone else would call or stop by to let her know for certain…".

The Representative's email went on to say that on April 17, 2019, he attended the residential property and advised the Tenant "that anything from the cleanout back towards and including the sewer main is the responsibility of the City and that if she had another blockage she might want to call [City Operations] in the event the blockage was on the City's side of the cleanout."

The Witness said that on February 27, 2019, he was at the residential property trimming trees over the Tenant's yard. The Witness said he noticed that the sewer pipe had backed up, so he called the Agent to let her know. The Witness said that a plumbing company arrived and he watched as they did their work, including having the Tenant's rental unit and the next door neighbour's unit flush the toilets, when requested. The Agent asked the Witness if he overheard any conversations as to where the blockage originated. The Witness said that when the Tenant flushed her toilet, the drain backed up and that the Technician had said that the blockage was because of paper towel or a similar substance that had been flushed down the toilet. The Witness said, "I was standing there and heard what was going on."

The Tenant was given the opportunity to ask the Witness some questions and she focused on work he had done in her unit under the bathroom sink and the bathtub. The Tenant asked the Witness if he had seen rodent droppings in the rental unit, which the

Witness agreed that he had. I asked the Tenant the relevance of this evidence to the blockage in question and she said it indicates that there are other issues going on. The Tenant said that she was not the type of person who would throw paper towel down the toilet, and that it would not make sense to dispose of paper towel in the bathroom, rather than in the kitchen garbage.

The Tenant said in the hearing:

> I'd like to state again, I've asked only for one thing - proof from [the plumbing company] that this problem was caused by my unit alone and that I am solely responsible. They know the cause of the problem, but [the Agent] seems to refuse to ask them. She skirts the issue and accuses me of this and that. She wants me to move. I have seen no evidence to prove that. This business of what they're pulling out of the pipes evolves. I do not feel that I am responsible.

I advised the Parties that I had not made up my mind on the matter, as I wanted to consult the documentary evidence, the Act and Policy Guidelines further. However, given the seriousness of the potential end to a tenancy in the Province's current housing market, I asked the Parties if they each had any proposals for the other Party, as a way to resolve this matter without putting the tenancy at risk. The Tenant said:

> I have stated right from the beginning – if I have proof from [the plumbing company] that it came from my trailer, I am willing to pay the bill. I will not hand over money that I don't think I owe. If that can't be provided then I see no other recourse.

The Agent said:

> The owner is adamant at being paid for this invoice; however, he is not unsympathetic to [the Tenant's] health issues. If she would be willing to pay for the invoice, Landlord would withdraw the Notice.

The Agent also said that if I decide in the Landlord's favour, that the owner will give the Tenant to the end of August 2019 to find a new place to rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on the balance of probabilities, I find the following.

The undisputed evidence before me is that a sewage pipe backed up and emptied raw sewage on the residential property, which I find put the Landlord's property at significant risk. The question before me is the source of the backup. Based on the evidence before me from the testimony and documentary evidence, I find on a balance of probabilities that the blockage was from the Tenant's unit. I find that inappropriate materials were flushed down the toilet by the Tenant or a guest who was visiting the unit, such that a plumbing company had to attend to unblock the pipes.

I find that the evidence from the City is that they are responsible for the portion of the sewer pipes from the cleanout back towards and including the sewer main. I find this means that the portion of the pipes from the cleanout to the rental unit is the responsibility of the respective tenants.

Based on the evidence before me overall, I find the Landlord has established sufficient cause, pursuant to Section 47 of the Act, to end the tenancy. I find that evidence before me demonstrates that the Tenant put the Landlord's property at significant risk and was unwilling to take responsibility for what happened.

As a result, the Tenant's Application to cancel the One Month Notice is dismissed.
I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the Act, I find the Landlord is entitled to an Order of Possession.

Pursuant to section 55 of the Act, and the instructions from the Agent regarding the end date of the tenancy, I grant an Order of Possession to the Landlord effective August 31, 2019 at 1:00 p.m.

Conclusion

I have found that the Tenant put the Landlord's property at significant risk by putting or allowing a guest(s) to put inappropriate materials down the toilet, resulting in sewage backing up on the residential property.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord

effective on August 31, 2019 at 1:00 p.m. This Order may be filed in the British Columbia Supreme Court and enforced as an Order of that Court.

Dated: July 16, 2019

Residential Tenancy Branch