



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 October 4, 2019 ("One Month Notice").

The Tenant, an assistant for the Tenant, and the Landlord 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 to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2013, and has a current monthly rent of \$1,050.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$475.00, and no pet damage deposit.

The Parties agreed that the Landlord served the Tenant with a One Month Notice by registered mail on October 4, 2019, that it is signed and dated October 4, 2019, with the rental unit address, the effective vacancy date of November 30, 2019 and the grounds for the One Month Notice are set out as:

- The 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;
 - put the Landlord's property at significant risk;
- The Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property; and
- The Tenant has not done required repairs of the damage to the unit.

The Landlord testified that the Tenant has a problem with hoarding that he first noticed during an inspection of the rental unit in July 2018. The Landlord said he gave the Tenant a few months to clean up the rental unit to get rid of the excess belongings. He said they met numerous times, but that nothing changed. The Landlord said that the Tenant is not meeting her obligation under the tenancy agreement and section 32 (2) of the Act to: "maintain reasonable health, cleanliness and sanitary standards throughout the rental unit". The Landlord said that the Tenant is not meeting these obligations. He said "you can't walk through the suite. It's a humungous fire hazard. I put in a new floor for her a few years ago, and I don't know if I will ever get it clean again."

The Tenant said: Yes, I have a mess, I have admitted to being a hoarder. The floor can be cleaned. I do not feel that there is all this damage. Yes, it is dirty, but I can get it cleaned up. I didn't realize I had so much stuff. I have stuff I have to get rid of I'm not denying that, but I'm working on getting rid of it."

The Landlord said that he has given the Tenant a year and a half, but that nothing has happened.

I've been to her house since the One Month Notice. I would have thought that

knowing for two months that you have to leave that she would do something. I have zero confidence that anything is going to change. She initially said, 'I'm taking you very seriously', but nothing has happened. If I was given an eviction notice, I'd do something to show the Landlord that I'm doing something about it. . nothing is going to change. She has had tons of opportunities. I've bent over backwards to help her out. Nothing's changing. It's not acceptable.

I went into her house about four months and her smoke alarm was beeping with low battery. We talked about it, but it's now sitting in a pile of garbage beeping. There is a risk to [the Tenant] and her family and the lower unit tenants' safety.

The Landlord pointed out photographs he submitted of the rental unit. He said the pictures have two different dates, well over a year apart, "and the difference is negligible."

I have sent her two texts in the last four months, if you have some stuff to take to the dump, I can take a truckload. I heard nothing from her. The place is a friggen' pig sty. It is going to take me months to get that place clean. I'm going to spend a lot of money to clean it up. The longer this goes on the worse it's going to get.

The Tenant said:

I am not the cleanest, tidiest person, but I do not let stuff get damaged. [Previous landlords] never knew I had this problem of hoarding. This has not happened to me before.

I put a battery in the smoke detector and when [the Landlord] came I meant to ask him to put it back up for me, but I completely forgot. I was having trouble trying to hook it back on.

The Landlord said:

I know she has fixed it, but the pictures of my refrigerator... I made the mistake of opening the fridge door on an inspection in September. I have never been so close to vomiting; it's just stuff oozing and flies exploding out of the fridge. I know she spent two days cleaning it up, but it shouldn't take an eviction notice to clean up your stuff. The pictures tell the story.

The Tenant said:

Even though it doesn't look like it, I have been trying to clean up the place. Just because he thinks I'm not taking it seriously, I am. I have mental health issues; I see a doctor. I didn't realize how much stuff I have. I have ADHD and I'm not good with time management. I wasn't feeling good – I had anemia. I'm on top of that now. I've been trying to deal with my mess, but there's not all this damage like he says there is. Yes, the fridge is bad; I've never let it get that way before. I did get it cleaned up. I didn't realize I had so much stuff. I admitted that I have a problem, and I deal with it and am making some changes; that's what I'm trying to do. I have my rent paid until the end of December.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Landlords and tenants' rights and obligations for cleanliness are set out in section 32 of the Act, which states:

Landlord and tenant obligations to repair and maintain

32 (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.

Section 37 states that tenants must leave the rental unit “reasonably clean and undamaged”.

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

...

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet his burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I find that the Tenant has not maintained

the rental unit in a state of reasonable health, cleanliness, and sanitary standards of a reasonable person.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. Therefore, I dismiss the tenant's application to cancel the Notice issued on October 4, 2019.

As the Landlord accepted occupancy rent for the month of December 2019, I find it appropriate to extend the effective vacancy date in the Notice to December 31, 2019 at 1:00 p.m., pursuant to section 66 of the Act. Therefore, I find the Landlord is entitled to an Order of Possession effective on the above extended vacancy date.

Conclusion

The Tenant's Application to cancel the One Month Notice, dated October 4, 2019, is dismissed and the One Month Notice is confirmed. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on **December 31, 2019 at 1:00 p.m. after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 13, 2019

Residential Tenancy Branch