



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNT, MNDC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated October 31, 2019 given for cause. He also seeks an extension of time to permit him to challenge that Notice and he seeks a monetary award for the value of various personal belongings left in the premises by him and by his family.

This hearing started on January 14 and was adjourned by consent to this day, without evidence being submitted.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlord consented to any extension of time necessary for the tenant to bring his application to challenge the Notice. Time is therefore duly extended.

At the start of the hearing the tenant's claim for a monetary award was dismissed with leave to re-apply. It is apparent that the tenant's belongings, or at least some of them, have been placed in storage by the landlord's cleaners. The parties are attempting to get those items back to the tenant and so the tenant's list of items claimed could be reduced or hopefully eliminated by the return of all items.

Issue(s) to be Decided

The Notice to End Tenancy claims that the tenant or a person permitted on the property by him has put the landlord's property at significant risk and that tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit. Proof of either of those allegations will justify eviction under s. 47 of the *Residential Tenancy Act* (the “Act”).

The issue is whether either of those things has happened.

Background and Evidence

The rental unit is a four bedroom townhouse, one of five townhouses in a row. The landlord owns just this one of the townhouses. The tenancy started in January 2011 with a previous landlord. Neither party was able to produce a written tenancy agreement. The tenant was living in the rental unit with his three children, ages: 16, 18 and 20 years old. The monthly rent was currently \$585.00, due on the first of each month. The landlord does not hold any deposit money.

On October 20, 2019 there was a fire in another of the five townhouses. The fire did not spread to this premises but significant water was poured on the entire row by the City fire department. The electricity and nature gas supply were turned off for all the townhouses. A City representative posted “do not occupy” notices on all the townhouses until they could be assessed as safe.

The City building inspector attended at this unit and found what he described as “an accumulation of material” two to three feet deep throughout the house and it appeared to have caused “degradation and mould throughout the home.” He determined the electrical system of the house to be unsafe due to excessive rust on many of the components as well as water leaking onto components in the downstairs (he not make clear in his October 29 letter to the tenant whether the water referred to had been introduced by the fire department or from some other source). The building inspector indicated that the landlord would be presenting a plan for remediation. Implicit in the letter was the fact that the rental unit was not then occupiable.

Indeed, the tenant and his family have not moved back in as of the date of this hearing three months later and the landlord has not remediated the townhouse.

The landlord appears to have retaken possession at the end of October and hired a cleaning firm to remove the material. The cleaning firm took photos which the landlord presented as evidence and which confirm the building inspector's October 29 letter.

The rental unit is literally full of things up to a level of two and three feet. Virtually all floor space is covered. Occasionally an item of furniture can be identified underneath. The tenant's advocate states it is a case of "hoarding." In my experience hoarding most often involves "clutter:" namely items acquired by the tenant and which he or she feels unreasonably compelled to keep. In this instance a considerable portion of the material shown in the photos appears to be garbage. There are bottles, cups, wrappers, empty food packages as well as randomly discarded clothing and footwear. There is no clear passage through any of the rooms shown in the cleaner's photos. There is no clear passage on the stairway to the upper level. Ms. A.T. for the landlord indicates the garbage included feces from a dog or dogs kept by the tenants and that there was mould "everywhere."

The cost of cleaning charged to the landlord was over \$18,000.00 plus tax. The cleaners removed over 12,000 pounds of "garbage, broken furniture and feces-contaminated-contents.

Ms. A.T. for the landlord indicates that the cost to remediate the rental unit from water damage related to the fire is so high, over \$80,000.00, that the landlord is considering not returning the rental unit to habitable status.

The tenant testified that he now admits he has a hoarding problem and that he felt he was trying to ask for help to deal with it. Though he has not resided in the rental unit since last October and it is unlikely the townhouse will be habitable in the near future, he indicates that if he is required to move he could lose his job and his children lose out on the community advantages that have accrued living there.

The tenant's advocate Mr. B. made a convincing argument that hoarding is a medical disorder and that a landlord cannot discriminate against a person with such a disorder; it is prohibited by the BC *Human Rights Code*. Further, he argues, the landlord who rents to a person with a hoarding disorder has a duty to accommodate the tenant. He refers

to Alberta residential tenancy information and to BC Residential Tenancy cases where landlords have agreed to work with hoarding tenants.

Analysis

In my view neither of the grounds stated in the Notice dated October 30, 2019 has been shown to have been justified on the evidence and so the Notice must be cancelled.

Significant Risk

The first ground given in the Notice is that the tenant has put the landlord's property at significant risk. Certainly a hoarder puts himself and other occupants at risk; escape in the event of fire was seriously compromised by the material piled up in this townhouse and given the large amount of discarded food containers and animal feces, perhaps the tenant and occupants were at risk from illness or disease.

However, when it comes to the question of whether the landlord's property has been put at risk, the landlord has not alleged or argued that the property was exposed to any particular risk because of the hoarding. It may be postulated that there was a higher risk of fire because of the hoarding but the evidence to substantiate that proposition, evidence like a fire inspector's opinion, is absent and an arbitrator is not free to act on mere speculation.

Extraordinary Damage

The landlord has been put to extraordinary cleaning costs but there is no convincing evidence of extraordinary damage. Ms. A.T. candidly acknowledged that the mould that resulted from the hoarding activity was a cleaning issue and not a damage issue (requiring replacement of walls and the like).

She asserted that there were two holes in the wall, one small and one the size of a football. The tenant's advocated disputed that the holes occurred during this tenancy and noted the landlord had not submitted the move-in inspection it said it had in its possession.

In my view it would have been easy enough to supply a picture of the holes and a copy of the move-in inspection to show the holes weren't there at the start of the tenancy. In

result I find the landlord has not proved the tenant caused extraordinary damage during this tenancy.

Conclusion

The Notice is cancelled.

Given this result there is no need to address the question of the effect of the *Human Rights Code* or of a duty to accommodate this tenant's alleged hoarding disability.

I should be noted that there was the start of a discussion about this tenancy having been "frustrated" by the fire and resultant damage. It was specifically stated at this hearing that this argument would not be dealt with here. It has not been raised by the application and would only come into relevance in the event it was determined that the Notice in question had not ended the tenancy.

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: January 29, 2020

Residential Tenancy Branch