



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The 127 Society for
Housing and [tenant name suppressed to
protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47.

Both parties attended the hearing and had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord was represented by executive director JG (the landlord). Witness for the landlord DL also attended.

As both parties were present service was confirmed. The respondent confirmed receipt of the notice of hearing and evidence. The applicant confirmed receipt of the evidence of the respondent. Based on the testimonies I find that service of the notice of hearing was in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started in April 2017. Rent is \$340.00 per month, due on the first day of the month. There are no arrears. At the outset of the tenancy a security deposit of \$340.00 was collected and the landlord still holds it in trust. The tenant continues to reside at the rental property. The rental unit is in an independent living building for tenants over the age of 45. A copy of the tenancy agreement was provided.

Both parties also agreed the Notice was posted to the tenant's door on January 27, 2020. The effective date of the Notice is February 29, 2020.

A copy of the Notice was provided. The reasons to end the tenancy are:

- 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.
- Break of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause were provided with the Notice: "See attached letter dated January 27, 2020." The letter states:

Following the scheduled Notice of Entry on Wednesday, January 22nd, 2020 [rental property] staff were unable to observe any significant change to alleviate our concerns to conduct pest control and reduce any potential fire hazard in your suite. We recognize the financial difficulties that you are experiencing but we must follow through with our duties as your landlord to perform proper pest inspections. We also can't ignore that due to sheer volume of items in your suite, if a fire were to occur, we could not be able to protect yourself and your neighbours or the building. As you have been unwilling to follow the terms of your signed Tenancy Agreement you are now receive a **Notice to End Tenancy**.

The landlord's letter dated September 13, 2019, states: "Declutter entire suite in order for all perimeter baseboard be inspected. [...] If you are unable to complete this request you run the risk of violating the terms of your lease agreement and the Residential Tenancy Act. This places you at risk of receiving a breach of tenancy and can potentially affect your residency."

The landlord's letter dated October 03, 2019, states:

This breach letter is being issued to you in regard to the safety of your suite and the safety of you and your neighbours in [anonymized].

The amount of items in your suite pose a **significant safety hazard** to you and others, particularly in the event of a fire emergency as you have boxes piled to near the ceiling rendering the sprinkler system ineffectual. This is unacceptable and contravenes the conditions of your tenancy agreement.

In the October 11, 2019 letter, the landlord offered help to the tenant to move to items away from the suite.

On October 23, 2019, the landlord recognized the tenant removed some of the items from his suite, but still maintained a significant amount of boxes stacked in his suite:

While this is the case it certainly isn't enough to mitigate the landlords concerns of potential hazard and failure to comply with pest inspection policy. One specific issue we addressed with you when we met was the height of the boxes stacked near the ceiling needs to be substantially decreased to allows the fire sprinkler system to function effectively. These boxes must be moved.

We would like to reiterate our offer of assistance to make this possible.

The photographs taken on November 07 and November 29, 2019, show a large amount of items in the tenant's suite. The furniture piles up to almost the ceiling of the suite and include large amounts of cardboard boxes and paper.

A new warning letter was sent by the landlord on November 26, 2019.

On December 02, 2019, a deadline was established by the landlord:

[...] This has officially been an ongoing situations since September 2019 and is still unresolved to present day, December 02, 2019. You have been given four months to resolve this but to no avail.

To reiterate the standpoint of the [rental property], as per your own wishes, 90% of the items in your suite must be removed by no later than January 22, 2020.

On December 10, 2019 the warning latter added: "we will unfortunately be providing you with a Notice to End Tenancy".

Pest control inspection reports dated June 11, September 10, October 07, 2019, November 07, 2019, and February 07, 2020 state the tenant's suite is: "unable to inspect, too cluttered".

The landlord's witness DL affirmed the building is from 1911 and there is a large amount of combustion material in the tenant's suite. This material reduces the effectiveness of the sprinklers.

The tenant affirmed he keeps his rental suite tidy, he spent hundreds of dollars to buy shelves units. The tenant is trying to sell 90% of the items. The rental unit is only 10 x 14 square feet. The help offered by the landlord is to send the tenant's items for donation. The items are worth thousands of dollars. The tenant's income is \$750.00 monthly and he has no money to pay for a storage for his items.

Analysis

Section 47 of the Act allows a landlord to end a tenancy for cause:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) The tenant or a person permitted on the property by the tenant has:

(i) Significantly interfered with or unreasonably disturbed another occupant or the landlord

(ii) Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

(iii) Put the landlord's property at significant risk.

The landlord served the Notice on January 27, 2020, and the tenant filed this application on February 06, 2020. I find that in accordance with Section 47 (4) of the Act, the tenant's application was submitted before the ten-day deadline to dispute the Notice.

The photographs provided by the landlord show an excessive number of items stored in the tenant's suite, piling up to close to the ceiling. The maintenance manager of the building (landlord's witness testimony) provided a cohesive testimony and emphasized the risk of fire in the tenant's rental suite because of the large amount of combustion material and reduced effectiveness of the sprinklers system.

The tenant received seven letters from the landlord between September and December 2019 about hoarding in his rental suite.

The tenant does not dispute he has an excessive number of items in his rental suite and insisted during the hearing he is trying to sell the items.

I find the action of the tenant (storing a large number of items in his rental suite, despite several warning to remove these items and offers of help from the landlord to do so), put the landlord's property at significant risk. I therefore find the landlord is entitled to end this tenancy, pursuant to sections 47 (1)(d)(iii).

I find the form and content of the Notice complies with section 52 of the Act. I confirm the Notice and find the tenancy ended on February 29, 2020. I dismiss the tenant's application without leave to reapply.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy and the tenant's application is dismissed, I must consider if the landlord is entitled to an Order of Possession.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an Order of Possession effective two days after service.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective two days after service. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The Order of Possession should be served immediately.

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: March 30, 2020

Residential Tenancy Branch