



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL BC
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant, W.N. and the landlord's agent, S.N., the landlord attended the hearing via conference call and provided affirmed testimony. The tenant, P.L.A. did not attend or participate in the hearing. The tenant, W.N. clarified that due to the circumstances of the conference call hearing and that the tenant, P.L.A. was deaf, there would be no point in attending. The tenant, P.L.A. was unrepresented.

Both parties confirmed the tenant served the landlord with the notice of hearing package in person. Both parties also confirmed the tenant served the landlord with all of the submitted documentary evidence. Both parties confirmed the landlord served the tenants with their submitted documentary evidence via Canada Post Registered Mail on March 5, 2020. Neither party raised any service issues.

I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with the 1 Month Notice dated January 14, 2020 in person on January 14, 2020. The 1 Month Notice sets out an effective end of tenancy date of February 20, 2020 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit.

The details of cause are:

On January 1, 2020 the tenant was discovered operating a commercial flower business from his residential suite. The tenant left a kitchen tap running for hours that significantly damaged 11 suites in the building. Tenant stored flowers in the kitchen sink and left tap running while sink was plugged. This tenant had been warned on numerous occasions that he had caused water to leak into the suite and balcony below. The damage caused by the tenant was significant and repairs will be costly. Tenant does not have insurance.

The landlord clarified that on January 1, 2020, the landlord was advised of water flowing into another rental unit below the tenant. The landlord's agent found 3 inches of water in the tenant's rental unit coming from the kitchen faucet as the source.

The tenants provided written submissions stating, *The flooding on January 1, 2020 was a direct result of a broken tap arm that had been reported twice prior. I am also disputing the amount of damage described in the letter of January 8, 2020.*

The tenant referred to photographs submitted of the bathtub faucet in which the tenant claims the landlord's plumber has repeatedly attempted to repair without success.

The landlord argued that the source of the water came from the kitchen faucet and not the bathtub faucet as claimed by the tenant. The landlord stated that a plumber attended and conducted a complete inspection of the kitchen sink including faucet and drains. The plumber wrote in a description "Discovered tenant had removed kitchen sink faucet spout. Re-installed spout and everything tested good. Conclusion is there was nothing wrong with the faucet." The landlord submitted a copy of the invoice dated January 6, 2020 as confirmation.

The tenant argued that the landlord's plumber was "bias" as they also lived in the rental property.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties and find that the landlord properly served the tenants with the notice to end tenancy issued for cause dated January 14, 2020.

I also find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord provided clear and concise evidence that water was reported flooding unit 902 and upon inspection the landlord's agent found water flowing from the tenants' rental unit, which was determined to have been flowing from the kitchen faucet. Although the tenant argued that the bathtub faucet was not properly repaired previously and was the cause of the water flooding, the tenant failed to provide sufficient evidence that the source of the flood was from the bathtub faucet. The landlord's evidence is that the tenant operates a home business in which the kitchen faucet spout was removed as claimed by the landlord's agent and the contracted plumber. Both parties provided evidence, the witness by stating that the kitchen faucet spout was found removed and the plumber's invoice which shows that the plumber found the kitchen sink faucet removed. The plumber then re-installed and tested it and found it "good". The plumber's conclusion was that there was nothing wrong with the faucet. On this basis, I find that the landlord has provided sufficient evidence that the tenant or a person permitted on the property by the tenant caused extraordinary damaged via water flooding 11 other rental units in the building. The tenants' application to cancel the 1 month notice is dismissed. The 1 month notice dated January 14, 2020 is upheld. As such, the landlord is granted an order of possession

effective 2 days after it is served upon the tenants as the effective end of tenancy date has now passed.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 27, 2020

Residential Tenancy Branch