



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

The respondents (landlords) WC and LC called into this teleconference at the date and time set for the hearing of this matter. The applicant (tenant) did not, although I waited until 11:52 A.M. to enable him to connect with this teleconference hearing scheduled for 11:00 A.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the respondents and I were the only persons who had called into this teleconference.

The landlord confirmed he received the Notice of Hearing and evidence from the tenant on March 12 and April, 16, 2020. The landlord affirmed he served his evidence to the tenant. I find that all parties have been served with the required documents.

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 issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue – Tenant’s application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the applicant I order the application dismissed without leave to reapply.

However, according to M.B.B. v. Affordable Housing Charitable Association, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant’s application is dismissed, are the landlords entitled to an Order of Possession based on the One Month Notice?

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 attending party; it is their obligation to present the evidence to substantiate their claim.

The landlord affirmed the tenancy started on August 01, 2015. Rent is \$1,293.50 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$575.00 was collected and the landlord still holds it in trust. A copy of the tenancy

agreement was submitted into evidence. The tenant continues to reside at the rental unit.

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
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The Notice is dated February 19, 2020 and was sent to the tenant by registered mail on that date (the tracking number is on the cover page of this decision). The effective date is March 31, 2020.

The details of the cause are:

A fire occurred in the unit on Monday February 17th, 2020. The tenant was not home at the time of the fire. The fire was caused by an electric teapot left on high temperature. A neighbor tenant who lives in the building, smelled smoke in their unit and heard the smoke detectors in the unit above. The tenant went outside to see smoke was billowing out of the windows, they called 911. The fire department arrived and broke the property by breaking the window adjacent to the front door to gain access. The fire department extinguished the fire.

The landlord affirmed the tenant left the rental unit on February 17, 2020 and left a teapot and a dishtowel on the stove with the element on high. The fire alarm went off because of the smoke and the neighbours called 911. The firefighters broke into the rental unit and removed the burned teapot and towel.

Photographs of the firefighters wearing air tanks removing the remains of the teapot from the rental unit and the broken window were submitted into evidence. The incident report issued by the fire department indicates 6 vehicles and 13 officers responded to the incident. The report states:

Crew made their way in with ventilation at their back, and found that a wash towel had completely burned was left on the stove with the element on high. The stove was turned off, and the unit was thoroughly ventilated.

A move-in condition inspection report signed by the landlords and the tenant on August 01, 2015 indicates the rental unit was in satisfactory condition upon the start of the tenancy.

The landlord affirmed the smoke was spread throughout the rental unit and also reached the rental unit below. The rental unit was inspected by a property inspector on February 18, 2020 and March 20, 2020.

The landlord affirmed major repairs are needed in the rental unit. The landlord applied for dispute resolution and is asking for a monetary award for \$11,382.00 due to the damages caused by the fire (the landlords' application hearing will be on a future date). The landlord submitted the following documents as evidence of the damages caused by the tenant to the rental unit:

- First response glass, \$336.69;
- Cleaning of furnace, \$470.40;
- Electric services, \$856.96;
- Painting, \$525.00;
- Interior wall cleaning, \$8,500.00.

The landlord also submitted into evidence several notices of entry for the contractors to enter the rental unit and conduct the repairs.

The tenant submitted a letter dated April 12, 2020. The tenant states: "The Fire Department being called in for a smoking teapot was an accident. I regret it and wished that I had never happened. I do not think it is a justification for an eviction."

Analysis

Based on the undisputed landlord's testimony, I find the tenant is deemed served the Notice on February 24, 2020, five days after the landlord sent it by registered mail, in accordance with sections 88 (c) and 90 (a) of the Act. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47 (4) of the Act.

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

- (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 residential property by the tenant has
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- [...]
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

Based on the landlord's undisputed testimony, several invoices for repairs in the rental unit needed as a consequence of the fire incident and also based on the tenant's letter admitting responsibility for the fire incident, I find the tenant caused extraordinary damage to the rental unit. I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(f) of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and is in the approved form.

I find that pursuant to section 55(2)(b) of the Act, the landlord is entitled to an order of possession effective March 31, 2020, the effective date of the Notice.

I warn the tenant that he may be liable for any costs the landlords incur to enforce the order of possession.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective on March 31, 2020. 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.

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: May 04, 2020