



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN TEAM REALTY INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, OLC, MNDCT, MNRT
OPC, MNRL-S, FFL

Introduction

This hearing convened as a result of Cross Applications. In the Tenant's Application for Dispute Resolution, filed on July 31, 2020, the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on July 21, 2020 (the "Notice"), more time to make such an application, monetary compensation from the Landlord in the amount of \$70,000.00 and an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement. In the Landlord's Application for Dispute Resolution, filed on August 11, 2020, the Landlord sought an Order of Possession based on the Notice, monetary compensation from the Tenant, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing of the parties' Applications was scheduled for teleconference at 11:00 on September 11, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

On the Tenant's Application for Dispute Resolution he named his wife as a Tenant. He also named the Property Manager as Landlord. A review of the residential tenancy agreement confirms only the Tenant was named; further, the Landlord is a corporation.

Pursuant to section 64(3)(c) of the *Act* I amend the Tenant's Application to accurately name the Tenant and Landlord.

Preliminary Matter

The evidence before me confirms the Tenant applied for Dispute Resolution within ten days of receipt of the Notice. As such, his request for more time to make an Application was not required.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Rule 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are also scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the parties' monetary claims; accordingly, I exercise my discretion and dismiss those claims with leave to reapply.

I also remind the Tenant that the monetary jurisdiction of the Residential Tenancy Branch is set by section 58(2)(a) of the *Act* which is the same as the B.C. Provincial Court (Small Claims Division) and is \$35,000.00. Should the Tenant wish to pursue \$70,000.00 in compensation from the Landlord, only the B.C. Supreme Court may make such awards.

Issues to be Decided

1. Should the Notice be cancelled?
2. If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and confirmed that this fixed term tenancy began March 1, 2019. Originally the rent was \$2,300.00 and was raised to \$2,400.00.

The Notice was issued on July 21, 2020. The reasons cited on the Notice were that the Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the rental unit. In the "Details of the Events" section on the Notice the Landlord further articulated the reasons for ending the tenancy as follows:

"On June 18th 2020 around 2:00pm the Tenant left the stove on causing a fire that extensively damaged the kitchen. The fire left the stove and hood fan in an unuseable state while the cabinetry and drywall became burnt or blackened. There is smoke damage to surrounding drywall and the kitchen needs to be renovated."

[reproduced as written]

The Fire Report was provided in evidence and read as follows:

"...[name redacted] was using the front left burner on the electric Frigidaire stove and had the element temperature setting to Hi. Burn patterns and the extent of the damage indicate a fire occurred by the front left stove element.

Fire and smoke damage was present to the stove, hood fan and cabinets immediately around the stove. The hood fan had clean burn patterns and the front control panel had melted plastic and most of the damage was located above the left element. The vent from the kitchen hood was flexible duct made of plastic which had also partially melted. Smoke damage was present throughout the second floor ceiling, additional an odor of fire was resent inside the building. [names redacted] were advised it may not be safe to remain in the building due to inhalation of products of combustion that may still e present. Myself and [name withheld] informed them of Emergency Social Services and advised of their services they offered....

Cause: Accidental..."

The report further indicated that there was damage to the kitchen cabinets and moderate smoke damaged. The Landlord also provided in evidence photos of the fire which depict the extensive nature of the damage caused by the fire.

J.L. testified that they have attempted to enter the rental unit to address the required repairs and the Tenant has refused to allow entry. J.L. confirmed that the workers who were hired to do the work are observing COVID-19 safety protocols. In support the Landlord provided an email from the restoration company hired to conduct the repairs in which they detail their efforts to enter the rental unit during the month of July.

J.L. stated that the Tenant agreed to move from the rental unit by the end of August and asked that the repairs occur after they moved out. The Tenant and his spouse then changed their minds and refused to move out.

Counsel for the Landlord submitted that the rental unit is no longer safe for occupation and as a result the tenancy has been frustrated.

In response, the Tenant testified as follows. The Tenant testified that he was outside the kitchen when the fire happened. He further Tenant stated that his wife was frying something with cooking oil in the wok when the fire started. His wife was yelling and he came into the room and saw the fire. The Tenant claimed that he saw something falling from the exhaust system.

The Tenant stated that he believes that that fire was caused by the connection part of the exhaust system, as they used rubber tape and when the exhaust system got hot the rubber melted and a part of the tube fell onto the stove.

The Tenant claimed that they have allowed the Landlord to attend the rental unit although he conceded the repairs have not been made and they do not have an operational stove.

Analysis

After consideration of the testimony of the parties, the evidence filed and the submissions made, I find as follows.

The Landlord issued the Notice pursuant to section 47(1)(f) which reads as follows:

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

...
(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;

I find the Landlord has met the burden of proving the reasons for issuing the Notice. I am satisfied that a fire occurred on June 18, 2020 while the Tenant's spouse was cooking. The Tenant confirmed that his wife was cooking with oil at the time the fire occurred. He also testified that while he was not in the room at the time the fire started, although he entered shortly thereafter as he heard his wife yelling from the kitchen.

Although the Tenant claims he saw something fall from the range hood, I find it more likely that occurred after the fire engulfed the range hood and melted the material. The photos submitted by the Landlord and the Fire Report support such a finding.

The Tenant claimed he submitted photos of the rubber tape to the online service portal. Those photos were not in evidence before me. Counsel for the Landlord confirmed they also did not receive these photos. On balance I am not persuaded by the Tenant's argument that the fire occurred due to an issue with the range hood exhaust, rather, I find the fire was caused by the Tenant's spouse when she was cooking with oil on high.

I therefore dismiss the Tenant's request for an Order canceling the Notice.

I grant the Landlord's request for an Order of Possession. As the effective date of the Notice has passed, the Order shall be effective two days after service on the Tenant.

Having been successful in their Application, I award the Landlord recovery of the filing fee. Pursuant to section 72 of the *Act* the Landlord is authorized to retain \$100.00 of the Tenant's security deposit as recovery of this sum.

Conclusion

The Tenant's request for an Order canceling the Notice is dismissed.

The Tenant's request for monetary compensation from the Landlord is dismissed with leave to reapply. The Tenant is cautioned that the monetary jurisdiction of the Residential Tenancy Branch is \$35,000.00.

The Landlord is granted an Order of Possession and may retain \$100.00 of the Tenant's security deposit as recovery of the filing fee.

The Landlord's request for monetary compensation from the Tenant, as well as the Landlord's request to retain the balance of the Tenant's security deposit is dismissed with leave to reapply.

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: September 14, 2020

Residential Tenancy Branch