



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Regal Eighty Management Corp. 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 One Month Notice to End Tenancy for Cause, pursuant to section 47.

The tenant, the tenant's advocate and an agent of the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called witness A.M.

Both parties agree the landlord was served with the tenant's application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the landlord entitled to an Order of Possession, pursuant to section 47 and 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately two years ago. Monthly rent in the amount of \$461.70 is payable on the first day of each month. A security deposit of \$200.00 was paid by the tenant to the landlord.

Both parties agree that the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of October 31, 2020 (the "One Month Notice") on September 8, 2020.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a 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.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site.

The agent testified that the tenant was served with the One Month Notice, primarily because the tenant started two fires at the subject rental property, the first on July 15, 2020 and the second on September 4, 2020. The agent testified that the subject rental property is a single room rental in a wood frame building and that a fire would spread quickly and has the potential to cause significant damage and put the health and safety of other tenants at serious risk.

The agent testified that the first fire was the most serious and caused damage to a curtain, the window sill and the floor beneath the window sill. The agent testified that the fire set off the fire alarm and other tenants rushed into the tenant's room on July 15, 2020 and put out the fire. Witness A.M. testified that he is a tenant at the subject rental property and was also working as the manager on July 15, 2020. Witness A.M. testified that he heard the fire alarm go off and ran up to the tenant's room. Witness A.M. testified that the tenant's door was closed, he entered the tenant's room and found the tenant asleep on his bed. Witness A.M. testified that he ran to get the fire hose and put out the fire.

The tenant testified that he put out both the first and second fires. Later in the hearing the tenant testified that other tenants put out the fires. The tenant testified that while witness A.M. attended in his door on July 15, 2020, he did not put the fire out. The tenant testified that the first fire started when the wind blew in his curtain which touched his ashtray and caught fire. The tenant denied that the fire caused damage to his floor but agreed that the curtain and window frame were burned.

The agent testified that the second fire was smaller than the first but shows a worrying pattern of fires that put the building and the safety of the other tenants in jeopardy. Witness A.M. testified that the second fire tripped the fire alarm and he again attended at the tenant's room to find the door closed and smoke filling the hallway. The agent testified that the tenant set his shirt on fire and that another tenant ran the tenant's shirt to the bathroom to be put out.

The tenant testified that his shirt caught on fire because it touched his ash tray. The tenant testified that he could have put both fires out but that the other tenants would not take no for an answer.

The landlord entered into evidence a petition signed by over 50 tenants which states:

We the tenants at [subject rental building] do not feel safe if [the tenant] remains a tenant here at the building. On two occasions in a month and a half [the tenant] has set fires in his room. We are lucky that they were caught in time but what if next time we don't. Please consider our safety when you make your decision.

The agent testified that the tenant may have started these fires intentionally so as to get money from social services. The tenant testified that he didn't know he could get money from welfare for the fires until a week after the first fire occurred.

The agent testified that the tenant painted his door without permission, and she told him to stop while he was halfway through but he did not. The agent testified that the tenant left paint splattered all over the floor, photographs of same were entered into evidence. The tenant testified that he didn't know he needed permission to paint his door and stopped when the agent told him to. The photograph entered into evidence shows that the entire door is painted.

The tenant's advocate submitted that:

- the landlord has not made out the claim that the tenant engaged in any illegal activity;
- the damages to the subject rental property are not extraordinary damages;
- the landlord has not made out the claim for repairs;
- the petition should be given little weight because it is not clear who wrote it; and
- the fires were accidents and while they put the other tenants at some risk, the small fires did not seriously jeopardize the other tenants.

Analysis

Sections 47(d), 47(e), 47(f), and 47(g) of the *Act* state:

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 residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(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;

(e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i)has caused or is likely to cause damage to the landlord's property,

(ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(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;

(g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

Based on the testimony of both parties, I find that the tenant started two fires at the subject rental property on July 15, 2020 and September 4, 2020. I find that fires were started due to the tenant's negligence, leaving smoldering/ hot materials in an ashtray near flammable material. I find that the fires in the wood frame building put the landlord's property at significant risk and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. While the fires may have been accidentally set, they nonetheless put other tenants at the subject rental property in jeopardy and such fires could travel quickly in a wood frame building. I also note that given the tenant's negligent use of an ashtray, there is a reasonable probability that a future fire would occur.

I find that the tenant breached section 47(1)(ii) and section 47(1)(iii) of the *Act*. I therefore dismiss the tenant's application to cancel the One Month Notice. Upon review of the One Month Notice, I find that it conforms to the form and content requirements of section 52 of the *Act*. The One Month Notice is upheld.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since I have dismissed the tenant's application and upheld the landlord's One Month Notice, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Since I have found that the landlord is entitled to an Order of Possession pursuant to sections 47(1)(d)(ii) and 47(1)(d)(iii), I decline to consider if the landlord is entitled to an Order of Possession pursuant to sections 47(e), 47(f), and 47(g) of the *Act*.

Conclusion

Pursuant to sections 47 and 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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: November 10, 2020

Residential Tenancy Branch