



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 05, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated January 28, 2021 (the “Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset that I would consider the dispute of the Notice and dismiss the remaining claims as they are not sufficiently related to the dispute of the Notice. The remaining claims are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

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

Background and Evidence

The Tenant testified as follows. She had a written tenancy agreement with the strata originally. The Landlord purchased the rental unit and became the Landlord in 2008. The tenancy started in July of 2004 and is a month-to-month tenancy. Rent is \$946.00 per month due on the first day of each month. She paid security and pet damage deposits.

The Landlord testified as follows. He could not find a written tenancy agreement. He has owned the rental unit since 2008. The tenancy is a month-to-month tenancy. Rent is \$946.00 per month due on the first day of each month.

The Notice was submitted as evidence. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of February 28, 2021. The grounds for the Notice are as follows:

1. Tenant or a person permitted on the property by the Tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - c. Put the landlord's property at significant risk
2. Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property
3. Tenant has assigned or sublet the rental unit/property without Landlord's written consent

The Details of the Events section of the Notice states:

Details of the Event(s):

The condition of the unit is deplorable has become a hazard and as a result also lost substantial loss in value.
Tenant has had several pets which have soiled the carpets over the years and failed to clean up after the pets as well as just normal clean up and general upkeep of the apartment-causing strong odors to emit from the unit into the hallways and deterioration of the unit.. The carpets have not even been vacuumed in the last couple of years.
The tenant continues to bring and accumulate and pile up boxes paper and "other stuff" in all the areas of the unit, creating a fire risk.
This has been going on over last few years but getting worse and has now become a health hazard and a liability, for other residents in on the floor also.
Several residents and the Strata Council, as well as the onsite manager have complained, and are concerned about their health and well being.
As a result The strata council has ruled for an eviction immediately..
The overall state of the unit is very bad. The floors are stinking and destroyed. Even walls have a putrid smell penetrated in them. The smell permeating outside
Plumbers and other contractors have refused to go in the unit..
In addition, Recently the Tenant has permitted a person to move in at the unit, without landlord consent , and this person has brought with them cockroaches and bedbugs which has made matters worse.
I have given the tenant many opportunities over last years to get her to clean up for her sake and her neighbors but she has not done her part.
The tenant needs to move out to avoid continued deterioration of the unit and substantial loss in value.
I am concerned about continuation of insurance coverage and liability.

The Tenant did not take issue with the form or content of the Notice when asked.

The parties agreed the Notice was served and received by the Tenant on January 29, 2021 in person.

The Landlord testified as follows in relation to the grounds for the Notice. He has been working with the Tenant in relation to the condition of the rental unit since 2017. He received a notice from strata about issues with the rental unit including that it is very unsanitary and is posing a challenge to neighbours. The strata asked him to talk to the Tenant about the condition of the rental unit and he did. The condition of the rental unit has not gotten better and has gotten worse. Every time he inspects the rental unit it is in horrible condition. The condition of the rental unit is a fire hazard and sanitary hazard. The strata has told him they will issue weekly fines in relation to the rental unit if the Tenant is not evicted. The value of the rental unit has decreased because of the condition of it.

The Landlord further testified as follows. The Tenant allowed another person to move into the rental unit as a roommate without authorization. The roommate brought bed bugs and cockroaches into the rental unit which has made matters worse. The strata and other owners living in the building are furious. When he goes to the building, he is cornered by other owners asking what he is doing to address the issues with the rental unit. He has done everything he can to resolve the situation. He has no choice but to have the rental unit emptied, cleaned and completely renovated.

The Landlord sought an Order of Possession effective May 31, 2021.

The Tenant testified as follows. Her roommate has left the rental unit. Her roommate's belongings are still at the rental unit. Her roommate brought in cockroaches but not bed bugs. Her husband was at the end of his life and soiled the mattress. The photos in evidence of leaves on the carpet were taken the same day rubbish people came and removed things from the rental unit. The leaves were cleaned up. The carpet was not changed and the walls were not painted before she moved in. People attended the rental unit in relation to the bathroom light and left a wood piece up that has mold on it. There was a flood and now there is a smell of mold in the bathroom. The Landlord has not done repairs. Her husband destroyed the carpet in the living room.

I do not find the documentary or video evidence submitted by the Tenant relevant and therefore have not outlined it here.

The Landlord submitted the following relevant documentary evidence:

- An email to the Landlord about the rental unit being a health hazard and a nuisance and the strata applying weekly fines until the Tenant is evicted. The email also asks the Landlord to schedule a pest control service and provide a copy of the report to strata as they do not want a bed bug or cockroach infestation. There are photos of the rental unit attached to the email.
- An outline of a text message from another tenant in the building to the Landlord with complaints about the smell coming from the rental unit.
- An outline of text messages from the strata office manager to the Landlord outlining issues with the rental unit including cockroaches, bed bugs and a smell. The outline indicates that three people had complained to the strata office manager that day about the smell in the hall coming from the rental unit. The outline mentions complaints received about the Tenant's roommate and the roommate possibly urinating in the elevator.
- Emails between the parties from 2017 in which the issue of the condition of the rental unit and the smell from the rental unit is addressed.
- A statement from a construction company employee stating that they entered the rental unit and it was unsanitary, hazardous to work in, smelled into the hallway, filthy and had junk, boxes, dirt and trash all over. The employee states that they refuse to go back to do work in the rental unit.
- An email from the Landlord to the Tenant in 2017 about cleaning the rental unit.
- An email from the Landlord to the Tenant July 30, 2020 about the condition of the rental unit.
- Photos of the rental unit.

- A video showing the condition of the rental unit and the parties discussing the cockroach and bedbug issue.

Analysis

The Notice was issued pursuant to section 47 of the *Act*. The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. There was no issue that the Tenant received the Notice January 29, 2021. The Application was filed February 05, 2021, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 47(1)(d) of the *Act* states:

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...

Section 32(2) of the *Act* states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Based on the Landlord's documentary and video evidence, I am satisfied that the Tenant has not maintained reasonable health, cleanliness or sanitary standards throughout the rental unit and has breached section 32(2) of the *Act*.

Based on the Landlord's documentary evidence, I am satisfied that the condition of the rental unit has been a longstanding issue and that the Tenant has been asked to address it.

Based on the Landlord's documentary and video evidence, I am satisfied that the condition of the rental unit is such that there is a smell coming from the rental unit into the hall which is disturbing others. Based on the Landlord's documentary and video evidence, I am satisfied that the Tenant's roommate brought bed bugs and cockroaches into the rental unit and that this has caused concern to other occupants of the building as well as the strata.

Based on the Landlord's documentary and video evidence, I am satisfied that the condition of the rental unit is such that the Landlord had grounds to issue the Notice pursuant to section 47(1)(d) of the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*.

Given the above, I dismiss the dispute of the Notice without leave to re-apply and uphold the Notice.

Section 55(1) of the *Act* requires an arbitrator to issue the landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have dismissed the dispute of the Notice and upheld the Notice. I have found that the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective May 31, 2021 at 1:00 p.m.

Conclusion

The Notice is upheld and the dispute is dismissed without leave to re-apply. The Landlord is issued an Order of Possession effective May 31, 2021 at 1:00 p.m. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court 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 *Act*.

Dated: May 11, 2021

Residential Tenancy Branch