



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled, if not, should the landlord be granted an order of possession?

Background and Evidence

The landlord's agent gave the following testimony. The tenancy began on August 1, 2002. The current monthly rent is \$320.00 payable on the first of each month. The landlord entered into written evidence a copy of his April 30, 2021 One Month Notice to End Tenancy for Cause. In that Notice, requiring the tenant to end this tenancy by May 31, 2021, the landlord cited the following reasons for the issuance of the Notice:

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.*

The landlord issued the notice because the tenant failed to provide proper access to and prepare his unit for pest control measures. The agent testified that the tenant's unit is overrun with mice, bedbugs and cockroaches. The agent testified that the tenant was given four warning notices about his noncompliance in being ready for the treatments. The agent testified that a letter was given to the tenant outlining the possible fines and or eviction for noncompliance.

The agent testified that he is at a loss as to what to do with the tenant. The agent testified that the tenant was offered free moving, new furniture and a fully renovated suite in the same building, but the tenant declined because he would not be able to bring his deep freezer into the new unit. The agent testified that he doesn't understand why the tenant would rather live in a unit with pests when he is offering a new unit and a new start at no expense to the tenant, as he has done with six other tenants.

The advocate for the tenant submits that the notice could be cancelled for three different reasons. The advocate submits that the landlord has not provided enough evidence at this time to show that the tenant has put the property at significant risk or jeopardized the health and safety of himself, the landlord or other occupants. The advocate submits that the notice could also be cancelled based on the doctrine of estoppel. The advocate submits that the tenant did fail to follow the directions as required on two of the treatments, but the other two treatments were done successfully. The advocate submits that by the landlord's own criteria, only fines should be imposed on the tenant and not grounds for eviction. Finally, the advocate submits that the landlord has an ulterior motive to end the tenancy in that he wishes to make this ground floor unit a wheelchair accessible unit. The advocate submits that any one of these reasons is sufficient to

cancel the notice. MM testified that he did not prepare his unit for treatment on two occasions, but it was a simply misunderstanding. GK testified that he's had pests in his unit for several years as well.

Analysis

It is worth noting that the landlord made significant attempts to assist the tenant by offering a fully renovated suite with new furniture and assistance to move even though this is an independent living arrangement, and that the landlord had no obligation to do so. However, the tenant refused that offer as he was more concerned about keeping his deep freezer. It is also worth noting that I do not accept the advocates submission that the landlord had an ulterior motive in ending this tenancy. The landlord was offering the tenant a fully renovated unit with extensive help at no cost to the tenant so that they could assist this tenant and future tenants that required wheelchair access. I find that actions of the landlord to be generous with no ulterior motive. I find the submission of the advocate on this point illogical and without merit.

When a landlord issues a notice under Section 47 of the Act, they bear the responsibility in providing sufficient evidence to support the issuance of that notice. In the matter before me I find that the doctrine of estoppel applies. In the landlords notice to the tenant, it states that if there are four separate incidents of failed preparation for pest treatments as a result of the tenant's actions, the landlord would then pursue a notice to end the tenancy. The landlord was able to provide proof of two such incidents, but not the four required by their own standard and the one that was stated to the tenant. Based on the insufficient documentation before me at this time, I hereby cancel the One Month Notice to End Tenancy for Cause dated April 30, 2021, it is of no effect or force.

Conclusion

The One Month Notice to End Tenancy for Cause is cancelled, the tenancy continues.

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 16, 2021

Residential Tenancy Branch