



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC RP

Introduction

The tenants applied to dispute a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”). They also applied for orders under sections 32 (repairs) and 62 (landlord compliance) of the Act. As the latter two claims are unrelated to the first, and most important claim, those two claims are severed and dismissed, pursuant to Rule 2.3 of the *Rules of Procedure*.

One of the tenants (it should be noted that the second tenant recently passed away) and two representatives for the landlord attended the hearing.

Issue

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The landlord’s representative (B.B.) gave evidence that they issued the Notice on June 29, 2021. A copy of the Notice was in evidence and there were four grounds indicated as to why the Notice was being given.

First, the Notice was issued because there was a leak caused by the tenants’ misuse of their toilet. The water leaked into the residential unit below the rental unit, causing damage. Receipts and photographs related to this damage were in evidence.

Second, it is alleged that the tenants have caused extraordinary damage to the rental unit. The rental unit has been heavily smoked in, there is garbage everywhere, a cat litter box, and so forth. The condition of the bathroom is such that it will require a replacement of the countertop. Several photographs of the rental unit were submitted into evidence.

The landlord testified that two separate contractors have in fact refused to do any repair work in the rental unit out of concerns that it is a hazmat risk. Copies of correspondence from these contractors were in evidence.

Third, the landlord's agent testified that a number of breach letters have been given to the tenants, but that nothing has been done. Indeed, the landlord pointed out that they would have considered rescinding the Notice in its entirety if the tenant made some effort at improving the condition. They let the tenants know of this possibility, of "hoping to get the train back on the track," as it were. Yet, despite giving the tenants time and opportunity, nothing much happened.

The tenant testified that the rug and walls were filthy when they moved in about twelve years ago. He provided a lengthy list of the many issues that were, and have always been, wrong and defective in the rental unit. The toilet apparently never worked right.

The tenant explained that he suffered, and continues to suffer, from grand mal seizures (also known as tonic-clonic seizures). As many as twenty-eight seizures a day. These frequent seizures have made it difficult for the tenant to take care of the rental unit. And the tenant's lover (that is, the now-deceased co-tenant) was going blind, and thus was not in a position to provide much help in any event.

The tenant testified that he does not know how to go about cleaning the rug, and just needs time. He also noted that they were allowed to smoke when they first moved in.

Analysis

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice was issued for four reasons. I will only address the second of the four grounds in this decision, namely, that the "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park."

This ground, as it appears on page two of the Notice, largely reflects subsection 47(1)(f) of the Act, which states that a landlord may end a tenancy by giving notice if “the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.”

In this dispute, the landlord provided ample photographic and documentary evidence as to the state and condition of the rental unit. I am not persuaded that the condition of the rental unit was in any likelihood in such a deplorable state and condition when the tenants moved in twelve years ago. More, that a plumbing company in fact refused to allow their technician in due to the condition speaks volumes. In an email dated August 16, 2021, from the company to the landlord, the company representative states:

Unfortunately these conditions under regulation are a hazmat risk and we would never allow our technicians to enter in this unit in the condition to which it is in. Health safety BC would not allow it as well as WCB.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the second ground on which the Notice is based. Consequently, the tenants’ application to cancel the Notice is dismissed and the Notice is upheld.

Having upheld the Notice on this ground I need not consider the remaining three grounds.

Pursuant to section 55(1) of the Act, (1) having dismissed the tenants’ application, and (2) having reviewed the Notice and finding that it complies with the form and content requirements of section 52 of the Act, the landlord is hereby granted an order of possession of the rental unit.

A copy of the order of possession is issued in conjunction with this decision, to the landlord.

Conclusion

The tenants’ application is dismissed without leave to reapply.

The landlord is granted an order of possession, which must be served on the tenant, and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 29, 2021

Residential Tenancy Branch