



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coquitlam Kinsmen Housing and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, PSF, RP

Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act; and
- an order requiring the landlord to make repairs to the rental unit.

The tenant and the landlord's agents (agents) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, all parties affirmed they were not recording the hearing.

The parties confirmed receiving the other's evidence, although the tenant's evidence was filed within two weeks of the hearing. I allowed the tenant's evidence to be considered.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed and considered all oral and written evidence before me that met the requirements of the Rules. 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 considered in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Neither party submitted a copy of the Notice. The tenant was unsure if she did and the agent thought they had done so, but said that they were having issues uploading the documents.

I allowed the hearing to continue and informed the parties that I would consider the Notice, as long as one party provided the Notice after the hearing, and the parties could agree on the contents of the Notice during the hearing.

As both parties had a copy of the Notice in front of them, they testified about the contents. The parties were in agreement on the contents of the Notice and the hearing continued. The landlord submitted a copy of the Notice shortly after the conclusion of the hearing.

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice. The balance of the tenant's application is **dismissed, with leave to re-apply**. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to prove the causes listed on the Notice or should it be cancelled?

Background and Evidence

The tenancy began on November 17, 2014.

Pursuant to the Rules, the landlord's agent proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated June 24, 2021, was signed by the agent DB, was served via attaching it to the tenant's door, and listed an effective end of tenancy of July 31, 2021.

The causes listed on the Notice alleged that the tenant or a person permitted on the property by the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk and caused extraordinary damage to the rental unit.

The agent testified that the issue is the state of the rental unit found on June 23, 2021, during an inspection. The agent explained that they have had a history with this tenant of the rental unit being dirty, damaged, and cluttered, to the point that the tenant was hoarding.

The agent submitted that they have worked tirelessly with the tenant over the course of the tenancy to help and aid her in keeping her rental unit clean and sanitary, and have issued many written warnings over the years, without success.

The agent testified that although they formally had monthly inspections, during Covid they had to limit their inspections. The last inspection prior to the June 23, 2021, inspection was in August 2020. The agent submitted that the rental property on June 23, 2021, was found to be in an unsanitary and unacceptable condition. The floors and carpet were filthy, the rental unit was full of personal property, and one of the bedrooms was completely filled with items, making access impossible.

The agent testified that on June 23, 2021, the rental unit was the dirtiest it has ever been, and due to the extreme heat during that time, they had a serious concern about infestations due to all the clutter, both in and outside the rental unit. The agent said that they had an obligation to all other tenants in the residential property to keep health and safety standards.

The landlord referred to their photographs and past written warnings, as the landlord confirmed they did not issue the tenant any written warnings prior to issuing the June 24, 2021, Notice.

Tenant's response –

The tenant agreed that she had a hoarding issue in the past, but she has now recognized that she cannot keep that amount of personal property on the premises. To that end, the tenant said she has had 195 bags removed from the property since October 2020. The tenant said that the bags were small, garbage-type bags.

The tenant agreed that on the day of the inspection, the home was cluttered as she had been dealing with her daughter's surgical recovery, but denied the rental unit was dirty. The tenant said that the kitchen floors can appear dirty, as they are very old, but denied that she has damaged the rental unit in any way. The tenant submitted that on the day of the inspection, there were 30 bags ready to be removed.

The tenant submitted that she had been collecting items to sell for charity and that she did not always have the personal property at her home, as she used her other daughter's home for storage.

The tenant submitted that she has now cleaned her rental unit and the agent expressed their surprise at how clean the rental unit was.

The tenant referred to her photographic evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

While the landlord has the burden of proof, I have reviewed and considered the oral, documentary, and photographic evidence of both parties.

In reviewing the landlord's evidence, I give no weight to the photographs taken in years past. The tenant may have cleaned the rental unit after that, and I find they were too remote in time to adequately support the Notice of June 24, 2021.

I looked to the current photographs taken on June 23, 2021, on pages 39 and 40, and while the kitchen floors appear dirty and show some clutter, I do not find the state of the kitchen floors to have seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk or caused extraordinary damage to the rental unit. [*My emphasis*]

In reviewing the photographs on page 47 of the living room, I find the state of the living room to be more troublesome. Although there was a large amount of clutter, there was not so much as to prevent access through the room and in a wider shot, there was nothing on the floor and a wide space between the sofa and chair. I, however, find the landlord submitted insufficient evidence to show extraordinary damage to the rental unit or that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or put the landlord's property at significant risk.

In reviewing the photograph of June 23, 2021, taken of the bathtub showing it was full of belongings, I find the landlord failed to prove whether this was the only bathtub in the rental unit. In the absence of that proof, I could not determine that the bathtub being an extra storage space fulfilled the landlord's burden to prove the causes listed on the Notice.

I gave no weight to the master bedroom photograph on page 51, as it was undated and only showed a portion of the room.

In reviewing the photographs on page 56 of the back yard, I do find that there was a troubling and problematic amount of clutter. However, the photograph was dated July 12, 2021, which leads me to conclude the state of the yard was not the reason the Notice was issued on June 24, 2021. I therefore gave this photograph no weight in considering whether the landlord had sufficient cause to end the tenancy on that date.

I have also not considered the past written warning to the tenant, as it is clear the infractions were not serious enough to issue Notices to the tenant at that time.

Taking into consideration all the oral, photographic, and documentary evidence presented before me, I find on a balance of probabilities that the landlord has not met

their burden of proving the grounds on which the Notice was issued. Accordingly, I **order** that the Notice dated June 24, 2021, is **cancelled**, and it is of no force or effect. I order the tenancy continue until it is ended in accordance with the Act.

Orders and Cautions to the tenant –

Although I have cancelled the Notice in this case, due to my findings herein, I find the evidence also shows that the tenant recognized that the rental unit was not in a state of reasonable health, cleanliness, and sanitary standards. I find support for this determination in reviewing the photographs of the rental unit submitted by the tenant, taken recently showing a tidy rental unit. Had the landlord's photograph of the back yard been taken on June 23, 2021 in support of their Notice, the Notice likely would have been upheld.

From the landlord's evidence and the tenant's acknowledgement that she has, or has had, a hoarding issue, I find the tenant has a history of failing to comply with her obligations under the Act.

I therefore use my authority under section 62(3) of the Act and I **order the tenant to comply** with section 32(2) of the Act, which requires a tenant maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The tenant is now informed that should she fail to maintain the rental unit as ordered, the landlord is at liberty to issue the tenant another One Month Notice to End Tenancy for Cause, and if they choose, the landlord may use this Decision as support for their Notice.

The tenant is informed that the landlord is entitled to make regular inspections of the rental unit and yard when legal notice of entry has been provided.

The landlord is informed that the Notice form they used in this matter is no longer the current RTB form.

Conclusion

The Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant has been issued an order to comply with the Act in relation to the state of the rental unit.

The portion of the tenant's application not dealing with her request seeking cancellation of the Notice 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: November 03, 2021

Residential Tenancy Branch