



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

The hearing was convened as a result of the Tenants' application for cancellation of a One Month Notice dated June 26, 2021 ("1 Month Notice") pursuant to section 47 of the *Residential Tenancy Act* ("Act").

This matter was set for hearing by telephone conference call at 11:00 am on October 29, 2021. Neither of the two tenants (individually referred to as "Tenant CD" or "Tenant CZ" and collectively the "Tenants") attended this hearing. The teleconference line remained open while the phone system was monitored for the entire hearing in order to enable the Tenants to call into this teleconference but neither of the Tenants called into the hearing during this time. During the hearing I asked from time to time if either of the Tenants had called into the conference. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing.

The landlord was represented at the hearing by an officer ("RS"), an agent ("RW") and the caretaker of the residential premises ("SY").

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

RW acknowledged the Tenants served the Landlord with the Notice of Dispute Resolution Proceeding ("NODP") by registered mail on June 26, 2021. RW could not recall the date the Landlord received the NODP but testified the registered mail was postmarked June 26, 2021. As the Landlord has acknowledged receipt of the NODP, I find that the Landlord was served the NODP in accordance with the provisions of section 89 of the Act.

RW stated that the Tenants did not serve the Landlord with any evidence. RW testified the Landlord served each of the Tenants with its evidence by two separate registered mailings on October 3, 2021. RW submitted four receipts and tracking numbers for the registered mail packages to corroborate its evidence was served on the Tenants. I find the Tenants were served with the Landlord's evidence in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Misspelling of Tenants' Names and Landlord's Name

The Landlord stated that, in the Tenants' application for dispute resolution, the Tenants had misspelled the surname of Tenant CD, did not include the surname of Tenant CZ and misspelled the Landlord's name. The Landlord referred me to the 1 Month Notice and the tenancy agreement for the correct spellings of Tenant CD's and the Landlord's names and the surname of Tenant CZ. The Landlord requested that I amend the Tenants' application to correct these errors.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

As the Landlord's request could reasonably be anticipated by the Tenants, I amended the Tenants' application to make these corrections.

Preliminary Matter – Effect of Non-Attendance by Tenants

Rules 6.6 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

6.6 The standard of proof and onus of proof

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.

The onus to prove their case is on the person making the claim. In most circumstances this is on the person making the application. However, in some situations the arbitrator may determine the onus is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though this is the Tenants' application, the Landlord bears the evidentiary burden to prove it is more likely than not that the 1 Month Notice is valid. The Landlord must meet this burden even if the Tenants do not attend the hearing.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submission supplied may or may not be considered.

As such, I will not consider any evidence submitted by the Tenants in advance of the hearing when adjudicating their application to cancel the 1 Month Notice.

Issues

- Are the Tenants entitled to an order cancelling the 1 Month Notice?
- If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' application and my findings are set out below.

The parties entered into a fixed-term tenancy agreement starting June 1, 2020 and ending May 31, 2021. On June 1, 2021, the parties entered subsequently into a fixed term tenancy starting June 1, 2021 and ending May 31, 2022. Monthly rent is currently \$1,720 and is due on the first of the month. At the start of the first tenancy agreement the Tenants provided the Landlord with a security deposit of \$860, which the Landlord continues to hold in trust for the Tenants. RW confirmed that, as of the date of the hearing, the Tenants are not in rental arrears.

RW testified the 1 Month Notice was served on the Tenants by registered mail on June 30, 2021. RW submitted a signed Proof of Service on Form RTB-34 together with the registered mail tracking stub and Canada Post tracking report to corroborate his testimony regarding service of the 1 Month Notice on the Tenants. I find that the 1 Month Notice was served on the Tenants in accordance with section 88 of the Act.

The 1 Month Notice listed 4 causes for ending the tenancy as follows:

1. tenant or person permitted on the property by the tenant has
 - (a) significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - (b) put the landlord's property at significant risk;
 - (c) engaged in illegal activity that has, or is likely to damage the landlord's property; and
 - (d) engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.

The 1 Month Notice provides the following details of the causes for ending the tenancy:

May 24, 2021 while alone in her suite, Tenant CD – tenant of [unit number of rental unit has been redacted] – was smoking in her bathroom. Smoking in the building or suite is not allowed and is a material breach of her tenancy agreement. The discarded cigarette set the unit on fire. Sprinklers went off and Richmond Fire Department attended. There was considerable damage to her suite caused by both fire and water. Adjoining suites and those below also sustained water damage as the result of this breach of material term. Her actions which she has admitted liability to in a written statement caused damage to the landlord's property but also to her fellow tenants' suites/property. This fire posed a direct threat not only to the tenant but also to the lives of her fellow residents. Her actions have seriously disrupted the lives of her fellow tenants. Suite damaged as a result of her negligence [unit numbers of 7 suites have been redacted]. Damages estimates for suites and common property are \$25,000 – repair invoices still coming in.

RW testified that on the evening of May 24, 2021, RS was called and advised that there was a fire at the residential premises. After that call, RS went to the residential premises and found firefighters attending at the residential premises. RW testified a fire started in the bathroom of the rental unit and the smoke triggered the fire suppression system. The fire suppression system then activated the fire sprinklers in the rental unit and elsewhere in the residential premises.

RW testified that, when RS arrived at the residential premises he saw Tenant CD who told him she was smoking in the rental unit and that she caused the fire. RW submitted a signed statement dated May 27, 2021 in which the Tenant states:

I, [Tenant CD], accept responsibility for the fire on the evening of May 24, 2021 that started in my room at [Unit Number has been redacted]. I was smoking in the bathroom.

I am aware that this is a non smoking building. I will obey all building and tenancy rules and never smoke at the property.

RW submitted an Incident Report ("Report") from the Richmond Fire-Rescue Department to corroborate his testimony regarding the details of the fire. The Report provides the results of an investigation into the cause of the fire in the rental unit. The Report states:

The East wall of the bathroom has the towel rack. At the base of the East wall and floor were two small metal buckets (one with a lid and one without) and scale. These items were about 8 to 9 inches away from the wall. The middle bucket did not have the lid. In this bucket were paper products of what appeared to be Kleenex. Digging through the remnants of this bucket I found cigarette butts. From the burn patterns on this East wall it would indicate the fire came from the middle bucket.

The rental unit was damaged by fire, smoke and water. Another 7 rental units were damaged by water from the fire suppression sprinklers. RW stated all tenants in the building were displaced and emergency housing was needed for those residents. RW testified the tenant living in the rental unit below the Tenants' rental unit continues to be displaced as restoration work is ongoing in that unit. RW stated the Landlord has been invoiced \$27,689.59 for restoration services so far and that none of those expenses are recoverable from the insurance coverage on the building as the policy contains a deductible of \$100,000.00. RW testified that paragraph 12 of the tenancy agreement requires the Tenants to carry tenant's insurance and, as of the date of the fire, the Tenants, had not secured that tenant's insurance. RW also stated that paragraph 5 of the tenancy agreement prohibits smoking in the residential premises.

RW testified the rental unit has been fully remediated including fresh paint and new flooring. RW stated that, notwithstanding the prohibition against smoking in the tenancy agreement, and after already causing a serious fire in the residential unit, Tenant CD

continues to smoke in the rental unit. RW testified that several tenants of the residential premises have threatened to vacate their units because they are fearful for their safety while the Tenant CD continues to reside in the residential premises.

RW submitted a copy of a signed Mutual Agreement to End Tenancy in which the Tenants agreed to vacate the rental unit on May 31, 2021. RW testified that, as of the date of this hearing, the Tenants have not vacated the rental unit.

Analysis

Section 47(1) of the Act states in part:

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;

Based on the undisputed testimony and evidence provided by RW, a fire originated the rental unit as a result of Tenant CD's disposal of a cigarette into a bucket containing paper products. A fire then ensued which resulted in fire, smoke and water damage to the rental unit and water damage to other units in the residential premises. Tenant CD admitted verbally to the RS on the evening of the fire that she should not have been

smoking. Tenant CD provided a signed written acknowledgement that she was smoking in the bathroom and accepted responsibility for the fire to the rental unit. I find that Tenant CD caused the fire.

The undisputed testimony of RW was that the fire resulted in the activation of the fire sprinklers in the residential premises. The rental unit damaged by fire, smoke and water and seven other rental units were damaged by water from the fire sprinklers. The actions of Tenant CD put the Landlord's property at significant risk.

The undisputed testimony of CW was all the occupants of the residential premises were displaced from their rental units and one occupant is still displaced from her rental unit as a result of the actions and neglect of Tenant CD. This displacement prevented other tenants from exercising their lawful right to occupy their rental units pursuant to the terms of their tenancy agreements with the Landlord. I find that Tenant CD seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant of the residential premises.

I find that Tenant CD has seriously jeopardized the health, safety and lawful right of other occupants of the residential premises. I also find that Tenant CD has put the Landlord's property at significant risk.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, cause for ending the tenancy pursuant to subsections 47(1)(d) and 47(1)(e) of the Act.

As I have found that the Landlord has proven cause under subsections 47(1)(d)(ii) and 47(1)(d)(iii) of the Act, it is unnecessary for me to determine whether the Tenants or a person permitted on the residential premises has engaged in an "illegal activity" as that term is used in subsections 47(1)(e)(i) or 47(1)(e)(ii).

I have reviewed the 1 Month Notice and find that it complies with form and content requirements of section 52 of the Act. As such, I find the 1 Month Notice is valid. I therefore dismiss the Tenants' application to cancel it, without leave to reapply.

Section 55(1) of the Act states:

Order of possession for the landlord

55(1) 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

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

As I have dismissed the Tenants' application and I have found the 1 Month Notice complies with section 52 of the Act, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached order on the Tenants.

Conclusion

The Tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenants. Should the Tenants 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 3, 2021

Residential Tenancy Branch