



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

Both parties attended the hearing. The landlord was represented by agents CF (the landlord) and building manager PE. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on March 01, 2020. Monthly rent is \$984.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$485.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

Both parties agreed the tenant received the Notice on June 04, 2022. The tenant submitted this application on June 08, 2022 and continues to occupy the rental unit.

The landlord submitted the Notice into evidence. It is dated May 31, 2022 and the effective date is July 31, 2022. The reasons to end the tenancy are:

- The 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 details of the cause are:

The tenant has repeatedly disconnected the fire/smoke alarm in their suite. The landlord addressed this issue with the tenant by letter on January 20, 2021 and January 12, 2021. The landlord was notified by the fire alarm inspection company that on May 12, 2022, the tenant again disconnected the smoke alarm in the suite. These actions by the tenant are a breach of the tenancy agreement and seriously jeopardize the safety of the tenants in the building and puts the landlord's property at significant risk.

Both parties agreed that the tenancy agreement requires the tenant to maintain the smoke detector connected.

The landlord affirmed that on January 05, 2021 he inspected the rental unit and observed that the tenant disconnected the smoke detector. The landlord reconnected the smoke detector and verbally instructed the tenant to not disconnect it. The landlord inspected the rental unit again on January 12, 2021 and observed that the tenant disconnected the smoke detector. The landlord reconnected it.

The tenant confirmed receipt of the January 12, 2021 letter:

During the Pest Control ant treatment in your suite today it was noted that the fire/smoke alarm in your suite was missing. The same issue was noted on January 5, 2020 and your building manager discussed this issue with you.

Fire regulations state that the smoke alarm must be connected and working at all times. Full compliance is mandatory and required by all suites. Having it disconnected poses a safety risk to you, the other tenants and the building.

Please ensure that the fire/smoke alarm in your suite is connected and operational at all times.

(emphasis in the original)

The landlord stated that the date "January 5, 2020" was a typo and the correct date is January 05, 2021.

The landlord inspected the rental unit again on January 20, 2021 and observed the tenant disconnected once again the smoke detector. The landlord testified he mailed and attached the January 20, 2021 letter to the rental unit's door on January 20, 2021. The letter states:

Sent by regular mail and posted on suite door

Further to our letter dated January 12, 2021, during the Orkin Pest Control ant treatment in your suite on January 19, 2021 it was noted that the fire/smoke alarm in your suite was still missing. The same issue was noted on January 5, 2021 and January 12, 2021

Fire regulations state that the smoke alarm must be connected and working at all times. Full compliance is mandatory and required by all suites. Having it disconnected poses a safety risk to you, the other tenants and the puts the landlord's property at significant risk.

We require that you rectify this breach immediately and reconnect your fire/smoke alarm so it is operational at all times

Failure to comply will result in the Landlord issuing a One Month Notice to End Tenancy for Cause.

(emphasis in the original)

The tenant does not recall receiving the January 20, 2021 letter.

The tenant said he disconnected the smoke detector because it was too sensitive, and the fire alarm goes off when he cooks. The tenant reconnected the smoke detector when he finished cooking and he forgot to reconnect it on the dates of the inspections.

The tenant asked the landlord to inspect the smoke detector, as it was too sensitive. Landlord PE affirmed that she has been the building manager for seven years and she addressed the tenant's complaint and advised the tenant to clean his stove, as a stove that is not clean can set off the fire alarm. PE stated the smoke detectors in the other rental units were not replaced.

The landlord testified that he did not inspect the rental unit between January 21, 2021 and May 11, 2022. The tenant said the landlord inspected the unit at least twice, but he does not recall the dates.

The landlord's contractor inspected the rental unit on May 12, 2022 and observed the smoke detector was removed.

The tenant affirmed he removed the smoke detector but put it on a shelf "3 steps away" and on July 05, 2022 a new smoke detector was installed. The tenant has not had issues with the new smoke detector.

The landlord learned about the May 12, 2022 inspection in the last week of May and served the Notice.

The tenant believes the landlord intends to terminate his tenancy because the current market rate is much higher.

The landlord stated that the landlord's insurance company may cancel the insurance if the smoke detectors are not functional.

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.

The tenant confirmed receipt of the Notice on June 04, 2022 and submitted this application on June 08, 2022. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with section 47(4) of the Act.

I accept the undisputed testimony that the tenant disconnected the smoke detector on January 05, 12 and 20, 2021 and that the tenant removed the smoke detector on May 12, 2022.

I find the landlord's testimony about serving the January 20, 2021 letter was convincing and the tenant's testimony was vague. Based on the landlord's convincing testimony and the January 20, 2021 letter, I find, on a balance of probabilities, the landlord served the January 20, 2021 letter by attaching it to the rental unit's door on January 20, 2021. The tenant is deemed served the January 20, 2021 letter on January 23, 2021, in accordance with sections 88(g) and 90(c) of the Act.

The tenant's testimony about the landlord inspecting the rental unit between January 21, 2021 and May 11, 2022 was vague and the landlord's testimony was convincing. I find the tenant failed to prove, on a balance of probabilities, that the landlord inspected the unit between January 21, 2021 and May 11, 2022.

The landlord addressed the tenant's complaint about the smoke detector and the tenant did not submit a new complaint.

The tenancy agreement requires the tenant to maintain the smoke detector operational. The landlord verbally warned the tenant to not disconnect the smoke detector on January 05, 2021 and warned in writing on January 12 and 20, 2021. The tenant repeatedly disconnected the smoke detector, despite the landlord's warnings and removed the smoke detector on May 12, 2022.

Section 47(1) of the Act states:

(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

[...]

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

(iii)put the landlord's property at significant risk;

I find the tenant put the landlord's property at significant risk, as the tenant disconnected the smoke detector on January 05, 12, 20, 2021 and removed it on May 12, 2022. The landlord warned the tenant in writing on January 12 and 20, 2021.

I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(d)(iii) of the Act. I dismiss the tenant's application without leave to reapply.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and it is in the approved form. I confirm the Notice and find the tenancy will end on July 31, 2022.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective on July 31, 2022.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant an order of possession to the landlord effective on July 31, 2022 at 1:00 P.M. The landlord is provided with this order in the above terms and must serve it on the tenant in accordance with the Act. If the tenant fails 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: July 15, 2022

Residential Tenancy Branch