



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, OLC

Introduction

This hearing was convened in response to an application by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) as follows:

The tenant requested:

- cancellation of the landlords’ One Month Notice to End Tenancy for Landlord’s Use of Property (“One Month Notice”), pursuant to section 47;
- an order to have the landlord conduct repairs to the unit/ suite as per section 32; and
- an order to compel the landlord to comply with the Act, regulation, or tenancy agreement pursuant to section 62.

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

Is the tenant entitled to have the notice set aside? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order to have the landlord conduct repairs to the unit/suite?

Is the tenant entitled to an order to have the landlord comply with the Act, regulation or tenancy agreement?

Background and Evidence

RW gave the following testimony. RW testified that this tenancy is currently on a month-to-month basis which began on October 16, 2020. The current monthly rent of \$680.00 is due on the first of each month. RW testified that the unit was brand new when given to the tenant and is LEED certified. RW testified that there is a strict no smoking and no pet policy as per the tenancy agreement. RW testified that the tenant has caused severe damage to the unit by smoking. RW testified that there are cigarette burns throughout the unit along with broken doors and holes in the wall. RW testified that the tenant was given an opportunity to make all the repairs and to rectify the situation but as of this hearing, she has not.

NF testified that he was in the tenant's unit and noticed a very strong smell of cigarettes and nicotine. NF testified that the unit was unkempt and had burns on the carpet and broken doors and holes in the wall. RW testified that a One Month Notice to End Tenancy for Cause was issued on May 18, 2022 with an effective date of June 30, 2022 for the following reason:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

RW testified that on April 21, 2022 written notice was given to the tenant to conduct repairs within a four week time frame and to have that work done so that it would match the quality and decorative theme of the rest of the building. RW testified that the tenant has still not completed the repairs and is fearful that the condition of the unit is worsening. RW requests an order of possession.

KS testified that she doesn't smoke in the unit and that she has been dealing with the death of her partner and many other issues. KS testified that 2022 has been a very difficult year for her family and she is trying to do the best that she can and would be looking to move on in a few months. KS testified that she thinks the landlords should do the repairs to the unit even though she caused them. KS testified that she has been in the unit for two years and much of it is just wear and tear.

Analysis

When a landlord issues a notice to end tenancy under section 47 of the Act, they bear the responsibility of providing sufficient evidence to support the issuance of the notice. In the matter before me, the tenant acknowledges that her she and her family caused the damage. The tenant gave reasons as to why the damage was done, but regardless of the reason, she is responsible for damages that exceed wear and tear. The landlord provided detailed documentation along with photographic evidence that clearly shows the damage is excessive and well beyond wear and tear. The tenant was given a letter on April 21, 2022 advising that she had four weeks to make the repairs, to which the tenant testified "isn't it their job to fix it?"

After careful consideration of the testimony and documentation before me I find that the landlord has provided sufficient evidence to justify the issuance of the notice to end the tenancy. Despite the landlords best attempts and almost five full months of warnings, the tenant did not rectify the issues, accordingly; I find that the landlord is entitled to an order of possession.

Section 55 of the *Act* reads in part as follows:

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.

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises 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: October 04, 2022

Residential Tenancy Branch