



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Duncan Kiwanis Village Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47

The tenant attended. The lawyer JC attended for the landlord as well as the agents TA, SM, PC and JB (“the landlord”).

Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord’s materials. Neither party raised issues of service. I find each party served the other in compliance with the *Act*.

Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states 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.

The landlord requested an Order of Possession pursuant to section 55(1).

Issue(s) to be Decided

Is the tenant entitled to an order dismissing the landlord's Notice? If not, is the landlord entitled to an order of possession pursuant to section 55(1)?

Background and Evidence

This hearing involved an assertion by a landlord that the tenant's unit is unsightly, unclean, unsafe and unsanitary. The landlord testified the condition has worsened over the years and has become intolerable. All warnings have been ineffective. The landlord issued a One Month Notice and requested an Order of Possession.

The tenant requested the One Month Notice be dismissed and the tenancy continue.

Tenancy

The parties agreed they entered into month-to-month residential tenancy agreement beginning July 1, 2011. Rent is \$410.00 monthly payable on the first of the month. The tenant did not provide a security deposit.

One Month Notice

The parties agreed the landlord issued a One Month Notice dated June 1, 2022 which was personally served on the tenant that day. The tenant acknowledged

service. The effective date of the Notice was July 31, 2022. A copy of the Notice was submitted which is in the RTB form.

The tenant applied to dispute the Notice within the time allowed.

The Notice stated the follow reasons:

1. the tenant has put the landlord's property at significant risk
2. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Notice states as follows:

Details of the Event(s):

After a fire safety inspection was completed April 20, 2022, [the tenant's] suite was identified as a fire and safety hazard due to her hoarding situation.

The access to the balcony was completely blocked, the hallway was barely passable, a rolled-up carpet was partially blocking the hallway floor, the bathtub was full of totes and various items, the storage room was full to the ceiling with items spilling out into the hallway.

A follow up inspection for cockroaches was attempted but it had to be re-scheduled as there was limited access to the kitchen, living room and bedroom areas the technician needed to inspect. A further inspection was held on April 25, 2022, by the general manager, [TA] and the pest control technician.

After this inspection, a letter was sent to Ms. Williams with concerns expressed about the overcrowded state of her apartment and which outlined the areas of her tenancy agreement she is in violation of.

A further inspection was set for Wednesday June 1, 2022, at 11 :00 a.m., requesting her to rectify the hoarding situation in her suite.

On Wednesday June 1, 2022, at 11 :00 a.m., the General Manager, [TA], the Maintenance Administrator, [JB] and the President of the [name of landlord], SM, attended [the tenant's] suite (207). [The tenant] did not answer the door when the general manager knocked. After several knocks, entry was made to the suite by the General Manager, [TA]. [The tenant] was not at home and the suite was found to be in almost the same condition it was on April 9, 2022.

The entry door was partially blocked by totes on the floor, the hallway was completely blocked with boxes, totes and laundry baskets, the kitchen had full garbage bags on the floor, stovetop was covered with dishes and plastic canisters, the living room furniture was not visible due to totes and clothing piled up on top of them, the bathroom shower/bathtub was full of totes, the bathroom sink was piled full of totes almost to the ceiling of the bathroom, the storage room was completely full of boxes, totes and various items.

[The tenant] has been advised that her suite is a fire, safety and health hazard and has done nothing to rectify the situation. Photos and a video ere obtained as backup documentation to the continued hoarding state inside the suite.

The landlord testified as to the veracity of the details in the Notice. The landlord submitted several photos of the tenant's unit in support of their observations.

The landlord testified to providing many written warnings to the tenant prior to the issuance of the One Month Notice. The tenant acknowledged receipt of the warnings and said she is doing the best she can. She denied the unit was as bad as the landlord said.

The landlord submitted a several page document titled "Timeline and Documentation" which set out the chronology of events regarding the tenant's unit. The agents at the hearing confirmed the veracity of the documents, summarized as follows:

1. The landlord sent a letter to the tenant dated May 9, 2013 stating her suite was a safety risk and requesting the tenant to remedy the situation.
2. The landlord sent similar letters to the tenant of the following dates: May 5, 2016, May 10, 2019, July 31, 2019, September 17, 2020, November 20, 2020, December 2, 2020, December 8, 2020, January 25, 2021 and June 27, 2022.
3. The landlord recorded multiple inspections of the tenant's unit with observations the unit was unsafe as exits were blocked and was extremely untidy and unclean.
4. The landlord discovered the tenant's unit was infested with cockroaches, earwigs, and "potentially other insects" on November 20, 2020. The landlord incurred costs for cleanup and treatment of \$5,000.00. The tenant has thwarted some subsequent inspections. The inspection of February 22, 2022 was not possible "due to the piled-up items all over the apartment, in the living room, in the bathroom, in the bedroom and in the storage room".
5. The tenant promised many times to correct the cluttered condition of her unit.
6. The tenant is noncooperative with the landlord.

The landlord submitted a separate batch of documents of 81 pages containing considerable correspondence with the tenant, fire inspectors and pest control officers surrounding the issue of the unit's condition.

The tenant stated she has been gradually reducing the amount of clutter in her unit. The tenant maintains that the items in her unit have a function in a "flea market business".

However, the landlord denied there has been any progress and testified that matters have only worsened over time.

Analysis

The Notice stated the follow reasons for the issuance:

1. the tenant has put the landlord's property at significant risk
2. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Section 47 states in part as follows:

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: ...

(d) the tenant or a person permitted on the residential property by the tenant has

...

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

The parties provided conflicting testimony. The landlord submitted many documents. Given the contradictory and differing testimony, I now address determination of credibility.

Credibility

A useful guide with respect to the determination of credibility, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Considering the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, credible, and forthright. The landlord provided consistent, logical, testimony supported by complete documentary evidence. The testimony regarding the reasons for issuance of the Notice was supported in all material aspects by documentary evidence. I find the landlord's version of events to be consistent with the probabilities that surround the events of the tenancy as I understand them. I find the landlord's evidence to meet the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I acknowledge that the tenant disagreed with much of the landlord's evidence, particularly the basis for the One Month Notice.

However, I do not find the tenant's submissions to be persuasive. I find the suggestion that the landlord is being untruthful or exaggerating to be unsupported by the evidence. I reject the tenant's claim that she is making progress in resolving the issue of the clutter.

Based on the foregoing, I prefer the landlord's evidence to the tenant's version of events. For these reasons, where the evidence of the parties conflict, I prefer the landlord's version.

Burden of Proof

I find the landlord has met the burden of proof with respect to the section 47(1)(iii), that is, the tenant has put the landlord's property at significant risk. I therefore find no need to consider the second reason.

In reaching my conclusion, I have considered *Policy Guideline 1. Landlord & Tenant – Responsibility of Residential Premises* and find that the tenant has not

met the tenant's responsibilities set out therein. The Guideline states in part as follows:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

I accept the landlord's testimony that the unit is a fire and safety hazard because of considerable contents, sometimes floor to ceiling, which block egress. I find the landlord discovered a serious pest infestation and subsequent investigations have been difficult or impossible because of the overcrowded state of the apartment.

I find that the landlord's evidence is supported by many photographs and documentary evidence. I find that the tenant's version of the condition of the unit to be untrue and not based on reality.

The landlord expressed frustration at fruitless efforts over years to convince the tenant to clean up the unit and stop creating safety issues.

The tenant maintains that the items in her unit have a function in a "flea market business", but I find that they are more in the nature of debris, garbage and refuse.

I also find the landlord has repeatedly warned the tenant to tidy and clean things up, but the tenant has not done so.

While the tenant asserts she has made efforts to tidy up, the photographs and the landlord's testimony show that the unit continues to be dominated by clutter. I find no evidence that the tenant has made any effort to comply with the landlord's warnings or meet deadlines.

I therefore dismiss the tenant's application.

Under section 47(5) of the Act, the tenant is presumed to have accepted that the tenancy would end on the effective date of the Notice. As the tenant is still in

possession of the unit, I find the landlord is entitled to an Order of Possession effective 1:00 PM November 15, 2022 as requested.

Conclusion

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

The landlord is granted an Order of Possession effective 1 :00 PM November 15, 2022. This Order must be served on the tenant. The Order may be filed and enforced in the Courts of BC.

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 04, 2022

Residential Tenancy Branch