



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under section 56 of the Act, seeking an order to end the tenancy earlier than the tenancy will end under two Notices to End Tenancy given under sections 46 and 47, and to obtain an order of possession for the rental unit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Should the tenancy be ended early and an Order of Possession granted to the Landlord?

Background and Evidence

The rental unit is part of a duplex, other parts of which are occupied by the Landlord and other occupants.

The Landlord has issued two Notices to End Tenancy to the Tenant. One was for cause under section 47 of the Act and the other was for non-payment of September rent. The Notice for cause has an effective date of September 30, 2011. The 10 day Notice to End Tenancy for unpaid rent was served on September 2, 2011, with an effective date of September 12, 2011, for unpaid rent for September.

The Tenant did not file an Application to dispute either Notice and the time to do so has expired. He testified he thought the 10 day Notice for unpaid rent was unlawful because

he had an oral agreement with the Landlord to deduct rent for utilities. The Tenant has given his Notice to End Tenancy effective on September 30, 2011. He attempted to pay half the rent for September and wanted the Landlord to use the security deposit for the other half.

The Landlord did not agree there was an oral agreement to not pay rent in September or to use the security deposit for rent.

Regardless of the Notices, recent events at the rental unit have caused the Landlord to file this Application to end the tenancy earlier than the end of September. The Landlord is alleging that the Tenant has seriously jeopardized the health or safety of the Landlord and other occupants in the rental unit property.

The Landlord testified and provided documentary evidence regarding a fire and smoke incident at the rental unit on September 5, 2011, which required the attendance of the fire department and an ambulance at the rental unit.

The Landlord testified that on September 5, she heard the smoke alarms going off in the rental unit. She went to the front of the rental unit and saw white smoke billowing out of an open window. She called to the Tenant to leave the rental unit but he did not.

The Landlord called the fire department. The fire department report sets out that when they arrived witnesses informed them the Tenant was inside refusing to come out. The fire department entered the rental unit and found the Tenant who, "... seemed to be confused...", and, "...was very disoriented." [Reproduced as written.]

The Tenant was walked outside by fire department personnel and taken to an ambulance to go to the hospital to be checked, apparently for smoke inhalation.

The report indicates the fire and smoke was caused a pan on the stove, although there was minimal or no structural damage. Ventilation fans had to be set up. The report indicates the fire department checked for signs of a possible drug lab inside and found a few containers of ammonia.

There was also a small dog in a cage in the kitchen and several birds in cages, which were all removed to the care of the SPCA.

The Tenant testified he put his dinner on the stove and then fell asleep and it burned. He testified he was busy opening windows and doors to allow the smoke to escape, and that is why he did not leave the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has jeopardized the health and safety of the other occupants and the Landlord.

I find the Tenant did not exercise reasonable care and attention in the rental unit which caused a fire on the stove and this jeopardized the safety of the Landlord and other occupants at the rental unit.

I am satisfied that it would be unreasonable and unfair to the other occupants of the residential property and the Landlord, to wait for the Notice to End Tenancy for cause to take effect at the end of September.

While it is not the reason I am granting this request under section 56 of the Act, I also note that the tenancy effectively ended under section 46 of the Act on September 12, 2011, as a result of the Tenant refusing to pay the rent in full and not disputing the Notice to End Tenancy for unpaid rent in the allowed time.

I grant the Landlord an order of possession effective at **1:00 p.m. September 21, 2011**. This order may be enforced in the British Columbia Supreme Court.

The Landlord may deduct \$50.00 from the security deposit held to recover the filing fee.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 19, 2011.

Residential Tenancy Branch