Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction
This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

At the hearing, the landlord made an oral request for an end to this tenancy if the tenant's application should be dismissed and an Order of Possession.

Preliminary Matters - Service of Documents
The landlord testified that he served the tenant the 1 Month Notice by leaving a copy in his mailbox and by posting it on his door on November 28, 2011. The tenant testified that he did not receive the 1 Month Notice until December 7, 2011 when he found it on his floor near his door. He said that he lost his mailbox key approximately one month before this hearing and did not receive his mail until the day of the hearing. He did so when he was present when the Canada Post employee delivered his mail and opened his mailbox for him. The landlord gave undisputed testimony that the tenant had not notified the landlord that he had lost his mailbox key until he gave this testimony at this hearing.

Section 90(c) of the *Act* establishes that a document posted on a tenant's door is deemed served on the third day after its posting, in this case on December 1, 2011. Since the landlord testified that no one witnessed him place the 1 Month Notice in the tenant's mailbox or on the tenant's door and the tenant said that he did not receive that Notice until December 7, 2011, I have allowed the tenant's application for dispute resolution filed on December 16, 2011.

The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on December 19, 2011. I am satisfied that this package was served to the landlord in accordance with the *Act*.

The only written evidence submitted by either party was the landlord's written evidence package sent by the landlord by registered mail on December 23, 2011. The landlord

provided the Canada Post Tracking Number to confirm this mailing. The tenant said that he has not received this evidence package. At the hearing, the tenant's advocate checked the Canada Post Tracking System and confirmed that Canada Post sent a final notice to the tenant, but the package has not yet been received. Although the tenant testified that he has not received this package or any of the notices sent to him by Canada Post, he did not dispute the landlord's claim that the landlord told the tenant that he would be sending written evidence by registered mail. I am satisfied by this undisputed testimony that the tenant knew that the landlord intended to send his written evidence by registered mail and took no steps to advise the landlord that he could not access his mail due to his loss of his key to his mailbox. Under these circumstances, I find that the tenant either lacked credibility in claiming that he has not received anything from Canada Post with respect to the registered mail sent to him or there was an element of purposefulness in the tenant's avoidance of service of these documents. At any rate, section 90(a) of the Act establishes that a document sent by registered mail is deemed to have been served on the fifth day after it was mailed. In accordance with section 90(a) of the *Act*, I find that the tenant was deemed to have been served with the landlord's evidence package on December 28, 2011,well in advance of this hearing.

The landlord said that he provided a copy of photographic evidence of the recent condition of the tenant's rental suite in the evidence package sent to the tenant on December 23, 2011. However, the landlord confirmed that the landlord had chosen not to send a copy of this photographic evidence as part of the evidence package forwarded to the Residential Tenancy Branch (RTB) in support of the landlord's request to disallow the tenant's application. Since the tenant could neither confirm nor deny that the photographs were included in the evidence package sent to him on December 23, 2011, I advised the landlord that I was in no position to consider photographic evidence that he proposed sending to the RTB after the conclusion of this hearing. I have proceeded to make a decision on this application on the basis of the landlord's written evidence as received by the RTB (i.e., excluding the landlord's photographs), the tenant's application for dispute resolution, and the oral testimony provided by the parties at the hearing.

Issues(s) to be Decided

Should the tenant's application to cancel the landlord's 1 Month Notice be allowed? If not, should this tenancy end and should the landlord be granted an Order of Possession?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on April 1, 2010. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent

is set at $675.00, payable in advance on the first of the month. The landlord continues to hold the tenant's $337.50 security deposit paid on March 25, 2010.

The landlord entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by December 31, 2011, the landlord cited the following reason for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk.*

The landlord testified that the landlord's property was being put at risk by the tenant's hoarding practice which has rendered it impossible to rid his rental unit of a cockroach infestation. He provided undisputed oral and written evidence of dates when the landlord advised the tenant of his intention to have the rental unit treated by a pest control company. However, on these occasions, the tenant had either restricted the landlord's access to the premises or, more recently, had not taken the necessary steps as set out in the notice to the tenant to prepare for this pest control activity. A December 10, 2011 Pest Control Report prepared by the landlord's pest control contractor entered into written evidence by the landlord read in part as follows:

> *...Severe cockroach infestation observed. Excessive storage conditions yield little access to essential area for proper treatment. Tenant suite contains high concentration of storage, items indicating infestation...*

The landlord testified that three tenants living near the tenant in this building have given their notices to end their tenancy recently because the cockroaches have spread to their rental unit(s). Without the tenant's co-operation, the landlord said that there has been a growing pest threat to the landlord's property.

The landlord also testified that the tenant has hoarded belongings in the rental unit to the extent that it presents a fire hazard. He testified that on one occasion a fire inspection could not include the tenant's bedroom because the bedroom door could not be opened due to the tenant's hoarded possessions so that this inspection could occur. The landlord testified that as recently as December 8, 2011, he witnessed the tenant's belongings in his bedroom extended to the ceiling.

The tenant did not dispute the landlord's claim that he had a lot of material in his rental unit. However, he and his advocate, who had viewed a photograph of his rental unit, said that the tenant has been making progress in cleaning out some of his belongings. The tenant testified that:

- his belongings are stacked approximately four feet high in his bedroom, half-way to the ceiling;
- approximately 15% of his carpet in the bedroom can be walked upon; and
- although his door cannot be fully opened, it can be opened to ¾ of its designed capacity.

The tenant said that the landlord had at one time agreed to let him store his belongings in a storage area in the basement. He could see no valid reason why the landlord had changed his mind about letting him do so. He said that it would not take him long to relocate many of his possessions to the basement storage area if the landlord agreed to let him store this material in that location.

Analysis

Based on the oral and written evidence provided by the parties, I am satisfied that the landlord has provided repeated warnings and notices to the tenant to clear his rental unit of the excessive belongings that he has left in the rental unit. In these warnings, the tenant has been notified that he may risk eviction if he does not comply with the landlord's need to have the rental unit restored to the level outlined in his residential tenancy agreement. Section 10. 2) of that agreement requires the tenant to maintain "reasonable health, cleanliness and sanitary standards through the rental unit."

Although it would have been very helpful had one of the parties provided photographs to assist with this hearing, I find the landlord's oral and written evidence and the tenant's own admissions at the hearing compelling proof that the landlord has demonstrated that the tenant has not complied with the terms of his tenancy agreement and placed the landlord's property at significant risk. The parties agreed that this process has been ongoing for some time. Despite repeated oral and written warnings, I find that the tenant has not take sufficient action to remedy the problems created by his failure to remove material from his rental unit. The descriptions of the tenant's rental unit provided by both the tenant and the landlord are sufficient to end this tenancy on the basis that a continuation of the tenancy will put the landlord's property at significant risk through pest infestation and through the risk of fire. While the onus rests with the landlord in demonstrating that he had sufficient grounds to issue the 1 Month Notice, the tenant also bears a responsibility to submit sufficient evidence that would call into question the landlord's oral and written evidence. In this case, other than the tenant's description of the condition of his rental unit and his objection to the landlord's assertion that the tenant's contents present a significant risk to the landlord's property, the tenant has not provided anything substantive to support his application. The tenant produced no witnesses or written statements from anyone who had actually visited his rental unit

and could refute the landlord's claims. The tenant provided no photographs to contradict the landlord's evidence while the landlord said that he provided photographs but failed to forward these to the RTB. Even I were to believe the tenant's oral testimony regarding the extent of the material that he has in his rental unit, I find that continuing this tenancy presents a significant fire and health risk to the landlord's property. In making this determination, I find that the landlord was under no obligation to let the tenant relocate potentially cockroach infested material from the tenant's suite to the basement storage area. I also accept the landlord's explanation that the landlord has been attempting at considerable cost to clear out the basement storage area and has no interest in allowing tenants to deposit additional material to this area.

For these reasons, I have dismissed the tenant's application to cancel the landlord's 1 Month Notice without leave to reapply.

Section 55(1) of the *Act* reads 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
>
> > *(a) the landlord makes an oral request for an order of possession, and*
> >
> > *(b) the director dismisses the tenant's application or upholds the landlord's notice.*

As I have dismissed the tenant's application, this tenancy is at an end. Although the landlord identified December 31, 2011 as the effective date for the end of this tenancy on the 1 Month Notice, the tenant's advocate correctly noted at the hearing that the date when the 1 Month Notice was deemed served was not until December 1, 2011. As such, I agree with the tenant's advocate's assertion that the earliest possible date that such a notice deemed served on December 1, 2011 could take effect would be January 31, 2012. In accordance with the *Act*, I have corrected the effective date on the 1 Month Notice to January 31, 2012, and issue an Order of Possession to take effect on that date.

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice without leave to reapply.

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on January 31, 2012. Should the tenant(s) 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: January 12, 2012

Residential Tenancy Branch