



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSON
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”) dated January 14, 2015. The Tenant also applied to suspend or set conditions on the Landlord’s right to enter the rental unit, and for ‘Other’ issues, namely relating to a request for the Landlord to comply with the Act when issuing written notice of entry into the rental suite.

Several participants appeared for the Landlord and each participant is identified in this decision by their initials. The full name of the participants appears on the front page of this decision. The Tenant also appeared for the hearing. Both parties provided affirmed testimony during the hearing.

The hearing process was explained and the parties were asked if they had any questions. Both parties were given the opportunity to present oral and documentary evidence, to cross-examine the other party, and make submissions to me. While the parties provided lengthy testimony and evidence relating to issues outside of this hearing and to a previous hearing held between them on November 17, 2014, I have only documented and analyzed that evidence relevant to the issues to be decided on and to give an overall understanding of this tenancy.

Preliminary Issues

LT confirmed receipt of the Tenant’s Application and Notice of Hearing documents which were personally served by the Tenant in accordance with Section 89(1) (b) of the *Residential Tenancy Act* (the “Act”).

The Tenant confirmed receipt of the Landlord’s documentary and photographic evidence which had been served to the Tenant within the time lines set out in the Rules of Procedure.

However, the Tenant provided his documentary and photographic evidence to the Residential Tenancy Branch and to the Landlord outside of the Rules of Procedure time limits. The Tenant also acknowledged that the photographic evidence he had submitted was black and white and was not very clear.

LT submitted that while the Tenant's evidence had been served to them late, they had considered the Tenant's evidence prior to the hearing and were willing to continue with the hearing using the Tenant's evidence.

During the conclusion of the hearing, LT made an oral request for an Order of Possession for the rental suite which was also documented in the Landlord's written submissions.

Issue(s) to be Decided

- Has the Tenant complied with a previous Order dated November 17, 2014?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy for an apartment in a residential building started on September 1, 1999 on a month to month basis. The Tenant currently pays the Landlord a rent contribution of \$320.00 on the first day of each month under a written tenancy agreement.

LT explained that in September 2014, the Tenant was served with a notice to end tenancy for cause because the Tenant had put the rental unit at significant risk and he had breached a material term of the tenancy agreement that was not corrected after written notice to do so was given. The Tenant disputed that notice to end tenancy and a hearing was conducted to determine the matter on November 17, 2014 by another Arbitrator.

LT provided a copy of the previous Arbitrator's decision dated November 17, 2014 into written evidence; the previous decision shows that the Arbitrator considered the parties' evidence and determined that the Tenant was entitled to cancel the notice to end tenancy dated September 25, 2014. However, the previous Arbitrator provided the Landlord with an alternate remedy as follows:

The proper remedy in this situation is an order that the tenant bring the rental unit up to the required standards. If the tenant fails to comply the landlord

may issue a Notice to End Tenancy pursuant to s. 47(1)(l) of the Act, for failure to comply with an order of the director.

I hereby order that the tenant attend to or arrange for cleaning as follows:

- a) Kitchen area: stove, fridge, countertops, cupboards and floor to be clean.*
- b) Bedroom/living room: floor to be clean/vacuumed. Boxes, furnishings, bags or other stored items to be moved or removed to permit any necessary cleaning/vacuuming.*
- c) Bathroom: tub, toilet, sink and floor to be clean.*

I direct and order that all the aforesaid cleaning be completed within thirty (30) days following service of this decision on the tenant in accordance with s. 88 of the Act. After that the landlord is free to serve notice and inspect and in the event this order has not been complied with, the landlord may served a one month Notice to End Tenancy pursuant to s. 47(1)(l) of the Act.

[Reproduced as written]

LT testified that they received a copy of the previous Arbitrator's decision which contained the above order and that it was served personally to the Tenant on November 20, 2014. SB confirmed service in this manner to the Tenant.

LT testified that she had planned to inspect the rental unit after 30 days in accordance with the previous Arbitrator's order and decided that she would also attend the inspection with the fire inspector. This was because during the previous hearing the Arbitrator was undecided on the evidence of the fire inspector regarding the rental unit and as a result wrote in the previous decision of November 17, 2014, in part:

The landlord is free to re-examine the suite with a Rescue Services person, a bylaw inspector or a member of the fire department and obtain a definite opinion about it and, if appropriate, issue another eviction notice.

[Reproduced as written]

LT testified that she served a written notice of entry into the Tenant's rental suite on November 25, 2014 for entry on December 23, 2014. A copy of this written notice was provided into written evidence. LT testified that in the interim time she attempted to arrange the fire inspector to be present for the December 23, 2014 inspection. However, as this was the holiday season, the fire inspector was unable to attend for this date. SB testified that he attempted to inform the Tenant that the entry on December 23, 2014 was not going to take place. However, the Tenant was not answering his phone. SB

testified that he appeared at the Tenant's rental unit on December 23, 2014 and after getting no response from knocking at the door, SB attempted to affected entry. However, this was not possible due to the amount of property stored inside the rental suite. SB testified that he did see an unknown man sleeping but he was unable to get his attention.

LT testified that she wrote to the Tenant informing him that they were unable to complete the scheduled inspection on December 23, 2014 and that she would look to schedule this in the New Year after she had coordinated the inspection with the fire inspector.

LT testified that on January 9, 2015 she served with Tenant with written notice to enter the rental suite on January 14, 2015 for an inspection in relation to the previous Arbitrator's order. A copy of the written notice of entry was provided into written evidence and LT testified that it was posted to the Tenant's door.

LT testified that on January 14, 2015 she appeared at the Tenant's rental suite with KH, SB and two fire inspectors. LT testified that the Tenant was verbally aggressive towards LT, KH and SB. This was verified in testimony by KH and SB.

LT testified that the Tenant refused access to the rental suite but eventually allowed only the fire inspectors in. LT, KH and SB testified that from what they could see from the corridor outside of the rental suite, it appeared as though the Tenant had not cleaned the rental suite and had not removed property from inside the rental suite as access by the fire inspectors was proving to be difficult. LT testified that the Tenant prevented them from taking any photographs from outside of the rental unit.

LT explained that she was provided with a copy of the fire inspector's report which was submitted into written evidence. Under the section of the report titled "Vancouver Fire By-Law Violations FOR IMMEDIATE COMPLIANCE" the fire inspector writes in part, "Reduce excessive amount of combustibles in suite, - Maintain 30 inch pathway throughout...(keep storage away from stove)".

LT testified she then personally served the Tenant with a copy of the fire inspection report along with a 1 Month Notice to End Tenancy for Cause (the "Notice") on January 14, 2015. The Notice was provided into written evidence and the reason elected on the Notice to end the tenancy is because of "Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order". The effective vacancy date on the Notice is February 28, 2015.

LT testified that in an effort to gather further evidence of the lack of the Tenant's compliance with the previous Arbitrator's order and the fire by-laws, she served the Tenant on January 15, 2015 with another written notice of entry into the Tenant's rental suite for January 21, 2015. A copy of this written notice was provided into written evidence.

LT then attend the Tenant's rental suite on January 21, 2015 with LT, SB and IC. LT testified that although the Tenant was reluctant to, he allowed them entry into the rental suite. LT testified that it did appear as though the Tenant had done some cleaning and some removal of his property but there was still property piled four feet high, the kitchen cupboards were filled with cockroach faeces and access to certain areas such as the stove was impeded. LT testified that when she attempted to take photographs the Tenant became aggressive and as a result, she was only able to take a limited amount.

LT pointed me to her photographic evidence which indicated that the Tenant had piles of property which blocked the stove which is why she could not inspect it. LT pointed me to the dirty kitchen cupboards in one of the photographs and the black spots which she indicated were cockroach faces.

LT then referred to a Condition Inspection Report (the "CIR") which was a form she used to document the state of the rental unit during the inspection. The CIR was provided into written evidence and the Landlord explained that the Tenant was offered to sign it but refused. The CIR shows that the floors in certain rooms cannot be seen due to the clutter and storage of the Tenant's property and that the floor in the kitchen and the kitchen cupboards need cleaning. The Landlord also notes on the CIR that garbage by the kitchen windows needs to be removed and the fridge and bathroom tub needs cleaning.

IC testified that the Tenant had made a slight improvement to the cleaning of the rental suite but this was not sufficient. IC testified that there is a need to do some minor maintenance inside the rental suite but this cannot be practically done as the Tenant has an excessive amount of property inside. SB also testified to the lack of cleaning the Tenant had performed at the time of the inspection.

The Tenant confirmed receipt of the Arbitrator's decision dated November 17, 2014 and the order contained within. The Tenant denied receipt of any written notice from the Landlord for entry into his rental suite on December 23, 2014 but acknowledged that he was aware that an inspection was planned to take place on this date. The Tenant acknowledged receipt of the written notice to enter his rental suite for January 14, 2015.

The Tenant also confirmed that he had received the Notice and had disputed the Notice within the ten day time limit afforded under Section 47(4) of the Act.

The Tenant testified that he did not have much to say in his defence. The Tenant explained that he was not a hoarder and repairs televisions to then given away to those that need them. The Tenant submitted that the LT had pursued a course of harassment against him and had misrepresented the situation.

The Tenant submitted that he had tried his best to comply with the previous Arbitrator's order in cleaning the rental suite and that he was doing this slowly as he has not been offered any help by the Landlords, cannot afford any help, has medical issues that limit him from performing cleaning duties and that because he is a senior, he cannot move all his belongings in one go because this would burn him out. The Tenant provided extensive medical evidence to support his claim that he has medical issues.

The Tenant submitted that the whole building is full of cockroaches and mice and it is the Landlord's responsibility for pest control. The Tenant explained that had the Landlord attended the rental suite on December 23, 2014 for the scheduled inspection she would have seen that he had cleaned 70% of the rental suite and had complied with 90% of the fire violations.

The Tenant submitted several photographs which were not clear and in black and white. The Tenant was asked to explain the photographs. The Tenant testified that the photographs show that the kitchen cupboards, the fridge, the bathrooms are now clean and that if the Landlord were to conduct an inspection today she would see this. The Tenant submitted that the carpets cannot be cleaned because they need to be replaced.

LT responded stating that the Tenant has been given four years to address this issue and has been offered assistance to remove property from inside the rental suite which he has refused. However, still the issues have not been rectified by the Tenant. LT submitted that she had analysed the photographs provided by the Tenant and was not even sure that they are of his rental suite.

Analysis

The Landlord issued the Tenant with a Notice based on the allegation the Tenant has not complied with an Order issued under the Act within 30 days of the Tenant receiving the order. Therefore, I must focus my attention and analysis on whether the Tenant has complied with the previous Arbitrator's order dated November 17, 2014.

Section 62(3) of the Act allows an Arbitrator to make an order necessary to give effect to the rights, obligations and prohibitions under the Act or for a landlord or tenant to comply with the Act.

Therefore, I find that the previous Arbitrator who had conduct of the November 17, 2014 hearing clearly ordered the Tenant to perform cleaning duties as follows:

- a) *Kitchen area: stove, fridge, countertops, cupboards and floor to be clean.*
- b) *Bedroom/living room: floor to be clean/vacuumed. Boxes, furnishings, bags or other stored items to be moved or removed to permit any necessary cleaning/vacuuming.*
- c) *Bathroom: tub, toilet, sink and floor to be clean.*

The previous Arbitrator also ordered that the above requirements be completed within 30 days of the Tenant receiving the order.

I accept the Landlord's evidence and the Tenant's acknowledgement that the Tenant was personally served the previous Arbitrator's order on November 20, 2014. Therefore, the Tenant would have had until December 20, 2014 to comply with the above requirements.

In analysing whether the Tenant did comply with the order, I must consider whether the Tenant has performed cleaning duties as set out in the order and then determine whether these have been done in the 30 day time limit that was provided to the Tenant.

As a result, I find that the Landlord has provided sufficient evidence on the balance of probabilities that the Tenant has failed to clean the rental suite as required and laid out by the previous Arbitrator. I accept the overwhelming oral testimony of the Landlord's participants for this hearing in conjunction with the photographic evidence, the fire inspection report and the CIR, that the Tenant has not sufficiently removed boxes, furnishings, bags and other stored items to permit necessary cleaning and vacuuming.

I also accept that the Tenant has failed to clean the kitchen cupboards as evidenced by the Landlord's photographic evidence. Despite the Landlord and Tenant disagreeing on pest infestation of the cupboards, the photograph clearly shows that the Tenant has made no effort to clean the cupboard. Therefore, on the balance of probabilities, it is highly unlikely that by December 20, 2014 the Tenant had completed all of the conditions laid out in the order.

The Tenant attempted to cancel the Notice by claiming that his rental suite was in compliance with the order had the Landlord completed the scheduled inspection of the rental suite on December 23, 2014. However, the Tenant provides no supporting or corroborating evidence of this and it would have been reasonable and prudent to expect the Tenant to have retained some evidence of this.

However, in this case, even though the previous Arbitrator ordered the Tenant to comply with it in 30 days, this does not mean that when the 30 days have elapsed the Tenant can now return to not keeping his rental suite in a reasonable state of health, cleanliness and sanitary standards as this is a requirement under Section 32(3) of the Act.

I do not accept the Tenant's claim that 70% of his rental suite had been cleaned by December 23, 2014 as the Tenant has provided insufficient evidence of this. However, even if I were to accept the Tenant's oral testimony, which I do not, completing 70% of what the previous Arbitrator ordered would not have been sufficient for me to cancel the Notice.

This also applies to the Tenant's photographic evidence which he provided late for this hearing. This suggests to me that these are recent photographs. I find that the Tenant's photographs are not clear and conclusive enough for me to make a finding that the Tenant had cleaned his rental suite in accordance with the previous Arbitrator's order. Again, even if I were to accept that the Tenant had cleaned the rental suite, which I do not, the time period to do so (30 days) would have already passed.

While I sympathise with the difficulties that the Tenant has in cleaning his rental suite and having to remove large amounts of property from the rental suite with his medical conditions, this does not exempt the Tenant from complying with the Act and is not a reason for me to cancel the Notice.

The Tenant was provided a sufficient amount of time to correct the situation for which the Landlord seeks to end the tenancy. However, the Tenant has failed to meet the conditions set out in the previous Arbitrator's order. The Landlord has no legal obligation to provide the Tenant with assistance to comply with order and the Notice cannot be cancelled on compassionate grounds.

Therefore, it is my finding that the Landlord has proved the Notice dated January 14, 2015 on the balance of probabilities, which I cannot cancel. As a result, the Tenant's Application to cancel the Notice is dismissed without leave to re-apply.

Section 55(1) of the Act states that if a Tenant makes an Application to dispute a Notice and the Notice is upheld, the Arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing.

As the LT made an oral request, the Landlord is granted an Order of Possession which is effective on the vacancy date of the Notice, February 28, 2015. This order must be served onto the Tenant and if the Tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court as an order of that court. Copies of this order for service and enforcement are attached to the Landlord's copy of this decision.

As the tenancy is now ending, the Tenant's Application to suspend or set conditions on the Landlord's right to enter the rental suite, and for the Landlord to comply with the Act in providing legal notice of entry into the rental suite, are now moot issues. Therefore, these portions of the Tenant's Application are also dismissed without leave to re-apply.

Conclusion

The Tenant has failed to comply with a 30 day order issued by a previous Arbitrator dated November 17, 2014. Therefore, I dismiss the Tenant's Application to cancel the Notice without leave to re-apply.

The Landlord is granted an Order of Possession for the rental unit for February 28, 2015.

The remainder of the Tenant's Application is now moot and is hereby dismissed without leave to re-apply.

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: February 11, 2015

Residential Tenancy Branch

