



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing concerns the tenants' application for cancellation of a 1 month notice to end tenancy for cause / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on June 1, 2006. Currently, the monthly rent is \$1,470.00, and a security deposit of \$637.50 was collected near the outset of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated April 30, 2012. The tenant who attended the hearing acknowledged receiving the notice through the mail slot at the unit door on that same date. Subsequently, the tenants filed an application to dispute the notice on May 7, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is May 31, 2012, and the reason shown on the notice for its issuance is as follows:

Tenant has caused extraordinary damage to the unit/site or property/park

Issuance of the notice arises mainly from breakage of a door handle in a common area of the building, in addition to the male tenant's having spat on the same common area door. The tenant argues that the door handle was weakened from normal wear and tear, and that its breakage was not the result of any improper action on his part. Evidence before me includes a receipt for the purchase of a replacement "passage lock set" in the total amount of \$22.39.

As to spitting on the door, the tenant described circumstances leading up to why he had an abundance of saliva in his mouth, and stated that it was his intention to spit on the floor, not on the door. In any event, the tenant forwarded his apologies in writing to the landlord for both of these incidents.

The landlord takes the position that the tenant's aggressive actions led to breakage of the door handle, and concludes that a visible scrape on the door is evidence of a foot being used in a kicking motion to break the door handle. There is no photographic evidence showing the tenant using any kicking motion toward the door or the door handle.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part as follows:

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

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

Further, section 47(4) of the Act provides:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

I find that the tenant filed his application to dispute the notice within the 10 day period available for doing same after service of the notice.

I find there is some question around whether the broken door handle is the equivalent of "extraordinary damage." In any event, based on the documentary evidence and testimony, I find that there is insufficient evidence to support the landlord's claim that the door handle was broken as a result of the tenant's improper, aggressive and intentionally destructive behaviour.

As to spitting on the door, I consider that by way of his written apology the tenant has acknowledged the impropriety of his behaviour. Further, while perhaps distasteful in its result, I find that the spitting has not resulted in “extraordinary damage” to the residential property.

In summary, I find that the landlord has failed to meet the burden of proving cause to end the tenancy. The landlord’s notice is therefore set aside, with the result that the tenancy continues in full force and effect.

As the tenants have succeeded with their application, I find that they have established entitlement to recovery of the filing fee. In this regard, I hereby order that the tenants may withhold \$50.00 from the next regular payment of monthly rent.

Conclusion

The landlord’s notice to end tenancy is hereby set aside.

The tenancy continues uninterrupted.

The tenants may recover the filing fee by way of withholding \$50.00 from the next regular payment of monthly rent.

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: May 29, 2012.

Residential Tenancy Branch