



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue- At the outset of the hearing, when discussing the evidence, the landlord raised a concern about the timing of the tenants' evidence, saying that they had not received it. The tenants' provided evidence that each landlord was served separately via registered mail. The landlord said they have been out of the country, unable to receive it.

I find the tenants served the landlords in a manner as required under section 88 of the Act, and I have allowed acceptance of the tenants' evidence. Further I do not consider that the landlords were prejudiced by the acceptance of the tenants' evidence as the tenants referenced that evidence during the hearing.

Issue(s) to be Decided

Have the tenants established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

The undisputed evidence shows that this tenancy began on March 22, 2013, monthly rent is \$1020 and the tenants paid a security deposit of \$510 at the beginning of the tenancy.

The subject of this dispute is a 1 Month Notice to End Tenancy for Cause, which was dated April 25, 2013 and listed an effective move out date of May 31, 2013. The landlords were unsure of the date the Notice was served upon the tenants; however the tenants said that they received the Notice on April 25.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlords proceeded first in the hearing and testified in support of issuing the tenants the Notice.

The cause as stated on the Notice alleged that the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlords' relevant evidence included a written summary referring to their internet research and information from a local orchid society, about upcoming shows and some information about the care of orchids.

In support of their Notice, the landlord testified that when the tenants notified the landlords about an issue with their dryer, the landlord attended the rental unit to check on the dryer. During the visit, the landlord said that he had a walkthrough of the rental unit and noticed a "tent" in one of the rooms, which appeared to be made of a black canvas type material.

The landlord contended that the tent took up most of the spare bedroom and contained a number of heat lamps generating an unusual amount of heat.

The landlords stated that directly afterwards, they consulted with a landlord's group, the consulting representative said "it was bad," and were advised to issue a 1 Month Notice to End Tenancy for Cause immediately without issuing any written cautions. The landlords issued the Notice and when the tenants filed an application for dispute resolution, the landlord promptly took to the internet to research the subject.

The landlord said that the tent was filled with orchids, placed in trays of water, which the landlord argued could cause damage to the hardwood floor.

The landlord also said that the tent and the orchids could create a fire hazard and that there was a chance of insects entering in the rental unit.

In response to my question about the walkthrough when attending to the dryer issue and the next day when going to the spare bedroom to take pictures when delivering the Notice, the landlords agreed that they had not issued a 24 hour written notice for those purposes.

In response, the tenants submitted that the male tenant is an experienced orchid grower, has served on the Board of Directors of a regional orchid society, and has just been accepted to be the director of the local orchid society for which the landlords submitted evidence.

The tenants submitted that pests, diseases, and viruses to which the landlords expressed concern were plant ailments, not affecting humans. The tenants further submitted that the referred to bugs were common garden pests found inside and outside of every home in any city.

The tenants further submitted that the lights used in the tent, which was made of an inflammable Mylar material, were low wattage in order not to kill the orchids, not consuming more than 800 watts in total.

The tenants further submitted that there was no excess heat or humidity from the tent as the tent was specifically designed to prevent such a condition; however the tenants said any excess heat or humidity occurred as the result of the bathroom having no extractor fan or outside window.

The tenants contended that a floor covering was used to prevent any water damage to the floor.

The tenants expressed concern that the landlords failed to ask them about the orchids and reacted by issuing a Notice rather than talk to them. The tenants also expressed a concern about the landlords making unannounced inspections in the rental unit.

Analysis

Once the tenants made a timely application to dispute the Notice, the landlords became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlords to prove the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlords have provided insufficient evidence to prove the cause listed on the Notice.

In reaching this conclusion, I find the landlords presented no specific evidence to support their belief that the Mylar tent and the orchid growing by the tenants posed any risk, hazard, or potential danger to the floor or the rental unit in general. I further find the landlords have submitted no evidence that there was excessive heat, humidity, or pests in the rental unit as a general report from an orchid society found during an internet search fails to meet the landlords' burden of proof.

Although it was not upon the tenants to disprove the Notice, I find that the tenants presented thorough, educated, and well reasoned evidence to support that their orchid growing posed no danger or risk to the rental unit.

Due to the above, I therefore find that the landlords have submitted insufficient proof to prove the cause listed on the Notice.

As a result, I find the landlords' 1 Month Notice to End Tenancy for Cause, dated April 25, 2013, for an effective move out date of May 31, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

During the course of the hearing, there was undisputed evidence that the landlords performed two unannounced inspections of the rental unit, one visit for the specific purpose of gathering evidence to bolster the landlords' claim.

I draw the landlords' attention to section 29 of the *Act*, restricting and outlining the landlords' right to enter the rental unit; in particular, the landlord must give a written, 24 hour notice, allowing for delivery times pursuant to section 90 of the *Act*, stating the purpose for entering.

I also draw the landlord's attention to Section 28 of the *Act*, which states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord, such as entering the rental premises frequently, or without notice or permission.

I make no finding of a monetary compensation for devaluation of the tenancy as that issue is not before me; however, pursuant to section 62 of the *Act*, the landlords are **ordered** to adhere to the terms of the *Act*, when communicating with the tenants and for other dealings with the tenants and this tenancy.

The landlords are advised that should they continue to enter the rental unit in violation of section 29, the tenants may seek compensation for loss of quiet enjoyment.

As the landlords appear unfamiliar with their obligations as a landlord, I have included a guidebook to the *Act* for the landlords to use as a reference.

I find the tenants were successful with their application and I award them the filing fee. The tenants are allowed to deduct \$50 from their next or a future month's payment of rent in satisfaction of this monetary award.

Conclusion

The landlords' 1 Month Notice to End Tenancy for Cause dated and issued April 24, 2013, is not valid and not supported by the evidence and the tenants are granted an order dismissing the Notice.

The tenants are directed to withhold \$50 from their next or a future month's rent payment in recovery of their filing fee for this application.

I order the landlords to comply with the Act and direct that the tenants be given quiet enjoyment of the rental unit and premises.

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 24, 2013



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca