



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel a 1 month Notice to end tenancy for cause that was issued on February 24, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The details of the tenancy agreement were in dispute. The tenant said that her witness was in fact a co-tenant. The landlord said he was not. The witness was asked to leave the room until his testimony was required. He did not testify and his status as a co-tenant was not determined.

Issue(s) to be Decided

Should the 1 month Notice ending tenancy for cause issued on February 24, 2014 be cancelled?

Background and Evidence

The parties could not agree on the start date of the tenancy; the landlord supplied bank rent deposit statements showing rent payments commencing in July 2012.

There was no dispute that rent is due on the 1st day of each month. The tenant said rent is \$630.00 per month and that an additional sum of \$45.00 is paid for rental of a shed. The landlord said rent is \$675.00 per month.

The landlord said that at the start of the tenancy her parents gave the tenant the tenancy agreement, which she was to sign and return to the landlord. The tenant did not return the tenancy agreement. The tenant submitted a copy of a tenancy agreement as evidence which indicated rent in the sum of \$630.00 per month and included the witness as a co-tenant. That agreement was not signed by the landlord. The landlord said the tenant had created this document and that it was not the agreement originally completed by the landlord.

The landlord resides in the upper portion of the home.

The landlord and the tenant agreed that the February 24, 2014 Notice ending tenancy for cause indicated the tenant was required to vacate the rental unit on March 27, 2014.

The reasons stated for the Notice to End Tenancy were that the tenant has

- been repeatedly late paying her rent;
- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord;
 - jeopardized a lawful right or interest of another occupant or the landlord.

The landlord provided evidence that since the start of the tenancy they have accepted 2 rent payments each month. One payment in the sum of \$375.00 is made before the 1st day of each month; a 2nd \$300.00 payment has been made shortly after the start of each month. The landlord said that since January the 2nd payments have not been made as usual. The landlord said that \$375.00 was paid on December 27, 2013; January 23, 2014 and February 28, 2014. The landlord said that she did not have information on the balance of rent payments that may have been made by cash during 2014.

The landlord has not issued a 10 day Notice ending tenancy for unpaid rent until this April.

In relation to illegal activity; the landlord supplied a record of the tenant's court history obtained from a search completed on a Court Services site. The landlord said that the records show that on March 4, 2014 the tenant was charged with a theft offence.

The landlord said they did not know about the tenant's criminal history when they rented to her. They suspect the tenant has tried to break into their vehicle; photographs of damage to the vehicle were supplied as evidence. The landlord believes the tenant may be responsible for identity theft of a person who lives in the home, as they share a mailbox with the tenant.

The landlord has overheard the tenant talk about her use of crack cocaine and the selling of drugs by her dealer.

The landlord stated that they have suspicion that the tenant is engaging in illegal activity, but they have not called the police. The landlord said that the police did attend at the unit on one occasion, to search the tenant's vehicle.

The landlord said they do not feel safe in their home and that the tenant is disruptive. The tenant has been smoking in the unit, which is a health risk to the landlord. The landlord said they have a right to a smoke-free environment. The tenant said she has smoked in the home since the start of the tenancy.

The landlord supplied a CD recording of the tenant, to prove that the tenant makes loud noises and disturbs the landlord. The landlord said the tenant is loud, that they can hear her yelling, knocking on windows, playing guitar hero in the late hours of the night and using foul language. The tenants smoke alarm repeatedly sounds and when the landlord goes to the door to investigate the tenant refuses to answer the door.

The tenant denied causing any disturbance and said she does not own a guitar hero game. The tenant said she was never given any warning that she was causing a disturbance and that until she received the Notice ending tenancy she thought there were no problems with the tenancy.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reasons on the Notice ending tenancy.

In relation to repeatedly late rent payments Residential Tenancy Branch policy suggests that 3 late payments are the minimum number sufficient to justify a Notice ending tenancy. The late payments do not need to be consecutive; they only must be considered as repeatedly late. A landlord who does not act in a timely manner after the most recent late payment could be determined to have waived the reliance on this provision of the Act. I find this to be a reasonable stance.

In this case the landlord has allowed the tenant, throughout the term of the tenancy, to make 2 rent payments each month. Now the landlord wishes to rely on a term, which is not set out in a signed tenancy agreement that rent has been repeatedly paid late.

I have considered the principle of estoppel; which prevents a person from insisting on their strict legal rights; where it would be inequitable for that person to do so, given the past dealings that have taken place between the parties.

Hughes v. Metropolitan Railway Co. (1877) 2 App.Cas.439. Lord Denning in Combe v. Combe, [1951] 1 All E.R. 767 (C.A.) put it this way:

The principle, as I understand it, is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance has been made by him...

After considering the landlord's agreement to accept rent, throughout this tenancy, via 2 rent payments each month, I find that the landlord cannot now rely on the provision of rent payments due dates to evict the tenant based on an expectation that rent due on the 1st day of each month. The landlord could not provide any details on what rent might be owed since January 2014; no dates or sums of cash payments made could be provided during the hearing. Therefore, I find that the landlord has failed to show, on the balance of probabilities that rent has been paid repeatedly late.

The tenant now agrees that rent is due on the 1st day of the month and from this point onward, I find, pursuant to section 62(3) of the Act that \$675.00 rent must be paid on or before the 1st day of each month.

There was no evidence before me indicating that the tenant had been made aware of the fact that she was causing any disturbance. There were no dates provided indicating when disturbances or interference occurred, which would have given the tenant an opportunity to respond and adjust her behaviour. There was no evidence of warning letters given to the tenant, outlining what was alleged to have occurred. In the absence of any evidence that the landlord took steps to inform the tenant that she had caused a disturbance or that she interfered with the landlord, I find that the landlord has failed to provide adequate evidence in support of this reason given on the Notice ending tenancy.

In relation to illegal activity, I find that the landlord has failed to prove, on the balance of probabilities that the tenant has engaged in illegal activity impacting the tenancy. The landlord stated that they have suspicions; but a tenancy may not be ended on suspicion of illegal activity. Policy suggests that even if the tenant has been charged with a criminal offence, the illegal activity must have a direct impact on the tenancy; a reasonable expectation. The landlord stated she only suspected illegal activity and that she heard the tenant talking about drugs; neither of which supports the end of tenancy. Therefore, I find that the Notice is not supported for the reason of alleged illegal activity.

A copy of the schedule of tenancy terms, set out in the Regulation has been appended after the conclusion of this decision. I find, in the absence of signed tenancy agreement; that the parties will be bound by the terms contained in that schedule.

In the absence of a signed tenancy agreement, I find, pursuant to section 62(3) of the Act, that there is no term prohibiting the tenant from smoking in the rental unit. There was no dispute that the tenant has smoked since the tenancy commenced; which I find established her right that cannot now be removed.

Conclusion

The Notice ending tenancy for cause issued on February 24, 2014 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

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: April 11, 2014

Residential Tenancy Branch

Schedule

[am. B.C. Reg. 234/2006, s. 22.]

Application of the Residential Tenancy Act

1 (1) *The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the Residential Tenancy Act or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.*

(2) *Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.*

(3) *The requirement for agreement under subsection (2) does not apply to the following:*

(a) *a rent increase given in accordance with the Residential Tenancy Act;*

(b) *a withdrawal of, or a restriction on, a service or facility in accordance with the Residential Tenancy Act;*

(c) *a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.*

Security deposit and pet damage deposit

2 (1) The landlord agrees

- (a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
- (b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
- (c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
 - (i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or
 - (ii) the landlord makes an application for dispute resolution under the Residential Tenancy Act within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.

(2) The 15 day period starts on the later of

- (a) the date the tenancy ends, or
- (b) the date the landlord receives the tenant's forwarding address in writing.

(3) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.

(4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.

Pets

3 Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the Guide Animal Act.

Condition inspections

4 (1) In accordance with sections 23 and 35 of the Act [condition inspections] and Part 3 of the regulation [condition inspections], the landlord and tenant must inspect the condition of the rental unit together

- (a) when the tenant is entitled to possession,
- (b) when the tenant starts keeping a pet during the tenancy, if a condition inspection was not completed at the start of the tenancy, and
- (c) at the end of the tenancy.

(2) The landlord and tenant may agree on a different day for the condition inspection.

(3) *The right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not perform the landlord's obligations under sections 23 and 35 of the Residential Tenancy Act.*

(4) *A right of the tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the tenant fails to perform the tenant's obligations under section 23 and 35 of the Residential Tenancy Act.*

Payment of rent

5 (1) *The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.*

(2) *The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.*

(3) *The landlord must give the tenant a receipt for rent paid in cash.*

(4) *The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.*

Rent increase

6 (1) *Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.*

(2) *A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.*

[For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]

(3) *The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.*

(4) *Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.*

Assign or sublet

7 (1) *The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold*

consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.

(2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may make an application for dispute resolution under the Residential Tenancy Act.

Repairs

8 (1) Landlord's obligations:

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the completion and costs of the repair

(2) Tenant's obligations:

(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.

(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.

(3) Emergency repairs:

(a) The landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.

(b) If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact person, and then give the landlord reasonable time to complete the repairs.

(c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the landlord. If the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.

(d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit, or
- (v) the electrical systems.

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

Locks

10 (1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.

(2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.

(3) The tenant must not change locks or other means of access to

- (a) common areas of residential property, unless the landlord consents to the change, or
- (b) his or her rental unit, unless the landlord agrees in writing to, or the director has ordered, the change.

Landlord's entry into rental unit

11 (1) For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.

(2) The landlord may enter the rental unit only if one of the following applies:

(a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states

(i) the purpose for entering, which must be reasonable, and

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;

(b) there is an emergency and the entry is necessary to protect life or property;

(c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;

(d) the tenant has abandoned the rental unit;

(e) the landlord has an order of the director or of a court saying the landlord may enter the rental unit;

(f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.

(3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).

(4) If a landlord enters or is likely to enter the rental unit illegally, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.

Ending the tenancy

12 (1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.

[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]

(2) This notice must be in writing and must

(a) include the address of the rental unit,

(b) include the date the tenancy is to end,

(c) be signed and dated by the tenant, and

(d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

(3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Residential Tenancy Act.

(4) The landlord may end the tenancy only for the reasons and only in the manner set out in the Residential Tenancy Act and the landlord must use

the approved notice to end a tenancy form available from the Residential Tenancy office.

(5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.

(6) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.

Landlord to give tenancy agreement to tenant

13 *The landlord must give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement.*

Dispute resolution

14 *Either the tenant or the landlord has the right to make an application for dispute resolution, as provided under the Residential Tenancy Act.*

Note: *this regulation repeals B.C. Regs. 161/2000, 264/98, 370/99, 125/2001 and 49/96.*

[Provisions of the Residential Tenancy Act, S.B.C. 2002, c. 78, relevant to the enactment of this regulation: sections 97, 104 and 115]

