



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rug Rat Flooring Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause and to recover the filing fee from the landlords for the cost of the application.

The tenant and both named landlords attended the conference call, and the landlords were represented by an agent. The parties each called one witness and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. One of the landlords, the landlords' agent, the tenant and the witnesses each gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The landlords' agent testified that this month-to-month tenancy began on July 1, 2014 and the tenant still resides in the rental unit. No written tenancy agreement exists, however rent in the amount of \$800.00 per month is payable in advance on the 1st day of each month. There are no rental arrears, however the landlords have not accepted rent from the tenant for the month of December, 2014 pending the outcome of this hearing. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

The landlords' agent further testified that there have been 3 notices issued to the tenant by the landlord to end the tenancy. On September 1, 2014 the landlord issued a 1 Month Notice to End Tenancy for Cause and another on September 7, 2014. The September 1, 2014 notice was retracted by the landlord, in order to give the tenant an extra 30 days to find a place to live. The September 7, 2014 notice was disputed by the tenant and resulted in a hearing. The Decision stated that the notice was "tossed out" because of a box not being checked off.

The landlord issued another notice to end tenancy on October 27, 2014 and a copy has been provided for this hearing. It is dated October 27, 2014 and contains an expected date of vacancy of November 30, 2014. The notice is on a form #04018-3 (11/2005), is a 4-page document, and the landlords' agent testified that it was obtained from the BC Access Centre. He testified that the notice was served personally to the tenant on October 27, 2014. The reason for issuing the notice is:

"e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord."

The landlords' agent testified that the illegal activity is a verbal assault by the tenant on other tenants and the landlord. Although it isn't illegal, the description on the notice is the closest that describes the reason for ending the tenancy and the landlords rely on the latter portion of the reason checked off. The landlords' agent stated that the witness statements show that the quiet enjoyment of other occupants and their guests, the landlords and the landlords' agent has been adversely affected by the tenant's actions. The first day the landlords' agent met the tenant, the landlord was dropping off garbage and the tenant ordered the landlord to get off the property and called the landlord "every name in the book."

The landlords' agent further testified that the tenant's rental unit is a double-wide trailer on a large private lot outside the city, and there are a total of 2 larger houses and 2 cabins as well as the tenant's rental unit. The property also adjoins other property owned by the landlords that contains 3 units.

The landlord seeks an Order of Possession, and has a new tenant waiting to move in. He submitted that this tenant has definitely not allowed the rest of, or most of the other tenants quiet enjoyment of their property until recently, and only because the tenant is trying to put on a good face. The landlords' agent testified that he does not believe that

behaviour will continue. The tenant has been given several months to find another place to live.

The landlord testified that he spoke to the tenant on a few occasions about problems with the tenant's interaction with others, and the tenant told the landlord to fuck off.

The landlord further testified that the garbage cans for the property were moved to a curb by an employee at the direction of the landlord because the vehicles parked by the tenant were causing a problem for the garbage truck to pick up garbage from the property, but the tenant moved them back. The landlord returned the cans, and the tenant came out and the parties began yelling at each other. The tenant did not give any explanation to the landlord about not wanting the cans to be located there. The landlord kicked the garbage cans sideways away from the parties and the tenant called police.

The landlord also testified that shortly after the previous dispute resolution hearing, the landlord served a 24 hour notice to inspect or install a smoke detector by posting the notice to the door of the rental unit, but the tenant would not allow the landlord in. The tenant told the landlord that the tenant had to be given 3 days notice, and with the other duties, the landlord cannot afford to do that.

The landlord served a notice to end tenancy to the tenant personally.

The landlord's witness testified that she resides on the rental property, and although not officially an employee, the witness does some chores for the landlords. The witness was present when the first notice to end the tenancy was issued. The tenant directed anger toward the witness, accusing the witness of being the whole reason the tenant was being evicted.

The witness was instructed by the landlord to move the garbage cans to another location and the following day discovered them returned. The witness had a confrontation with the tenant and when the witness attempted to move the cans back, an argument ensued, the witness threw up her arms in defeat and contacted the owner. The owner and the witness returned the cans and the tenant came out upset and an argument ensued between the landlord and the tenant. The witness asked why it was a problem and the tenant advised that it was the smell, however the cans were only a little bit closer to the tenant's fence, but from the door to the new location, there wasn't much difference and the witness believes the smell would be the same.

The tenant testified that the tenant does not get along with the landlord's witness but other tenants on the property don't have a problem with the tenant.

The tenant also testified that she asked the landlord to keep the garbage cans where they were and tried to explain that she didn't want them near her barbeque, and the garbage truck has no problem getting through.

The tenant testified that the landlord posted a notice to enter the rental unit to make repairs and the tenant texted the other landlord to find out what was going to be worked on and when because the parties had an agreement that the tenant would be given notice so that the children would not be there. The tenant received a text message back saying that the landlord wasn't going to make the repairs because the tenant wasn't working with his schedule. The tenant testified that she tried to work with his schedule but he shut down and refused.

The tenant submits that all of the allegations of the landlord are unfounded, and the tenant has not done what the landlords accuse. After the tenant called police to have the landlords' witness and agent leave the tenant alone, they have not been bothering the tenant and there have been no problems.

The tenant's witness testified that he has been a friend of the tenant for a few years, has been on the property frequently, almost every day since the tenant moved in, and has not seen any illegal activity. He also testified that the tenant has tried to work with the landlords' witness, but the parties had a disagreement about garbage cans because the landlord moved them from a location 30 feet from the tenant's yard to a location 5 feet from the tenant's yard. He witnessed a discussion between them and the tenant said that she didn't want them there. The tenant had also asked the landlords' witness to stop going to the tenant's deck at night.

The witness also testified that he helped the tenant move in, and one day the tenant announced that she had learned that a person who lived on the property had a criminal record and the witness told the tenant it was totally in her right that as a single mother of 2 girls to insist another person be present when he comes around.

Analysis

Where a tenant disputes a notice to end a tenancy given by the landlord, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the 4-page notice, and the *Residential Tenancy Act* specifies that such a notice be in the approved form. The landlords' agent testified that the notice was obtained from the BC Access Centre, however it is outdated.

The reason for issuing the notice must comply with Section 47 of the *Act*, which sets out in which cases a landlord can issue such a notice. The form used by the landlords in this case states that the tenant has engaged in illegal activity, and the landlord's agent testified that although the tenant's conduct is not illegal, the landlord relies on the latter portion of the reason set out beside the box ticked in the notice. The approved form that is in use today contains specific sections so that a landlord does not have to attempt to pick out a part of a recital, but the recitals contained in that form are the same reasons set out in Section 47 of the *Act*. Section 47 is attached at the end of this Decision.

In the circumstances, I cannot find that the notice to end tenancy issued by the landlord was issued in accordance with the *Residential Tenancy Act* and I hereby cancel it.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee and I order the tenant to reduce rent for December, 2014 or a future month by that amount as recovery.

Conclusion

For the reasons set out above, the notice to end tenancy issued by the landlord dated October 27, 2014 is hereby cancelled and the tenancy continues.

I hereby order the tenant to reduce rent for December, 2014 or a future month by \$50.00 as recovery of the filing fee.

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: December 12, 2014

Residential Tenancy Branch

Landlord's notice: cause

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

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (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;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
- (ii) the date specified in the order for the tenant to comply with the order.

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(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.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

