



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MT, CNC, O, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the *Act*"). The tenants applied for:

- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- other relief to be specified at the hearing; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords applied for an Order of Possession for Cause with respect to the rental unit pursuant to section 55 of the *Act*.

All parties, including two tenants and two landlords, attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants were represented by counsel.

Preliminary Issue: Service of Documents including request for More Time to Apply

The landlords provided evidence that a 1 Month Notice to End Tenancy for Cause was served to the tenants on November 16, 2014 by registered mail. The landlord provided a tracking number with respect to this mailing. Landlord RK gave sworn testimony that she served the Application for Dispute Resolution hearing package by registered mail with on December 14, 2014. The tenants claimed that they did not receive the registered mail package of the 1 Month Notice until December 22, 2014.

Residential Tenancy Policy Guideline No. 12 provides the standards for service of documents under the *Residential Tenancy Act*. The guideline states that the purpose of serving documents is to notify parties of the proceedings and the subject of those

proceedings so that they may attend and respond in support of their position. The landlords sent the 1 Month Notice by registered mail, an approved manner of service. He provided proof of this mailing in his documentary evidence. He sent the mailing in the name of the only tenant according to the residential tenancy agreement.

Residential Policy Guideline No. 12 also provides the guiding principles regarding deemed service; “deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Deemed service applies to all types of documents not personally served”. The *Residential Tenancy Act* deems that a document not served personally, but by registered mail has been served 5 days after mailing. The *Act* provides that the refusal of a party to either accept or pick up the registered mail, service continues to be deemed to have occurred 5 days after mailing.

I find that the fact that the 1 Month Notice was in the name of the authorized tenant, Tenant AS, that he provided sworn testimony that he was out of town and that the occupant HS provided sworn testimony that she was unable to sign and receive the landlords’ package is clear evidence that service did not occur 5 days after the mailing of this package. I find the tenants deemed served with the 1 Month Notice to End Tenancy on December 22, 2014, the date they testified to receipt of the notice.

The tenants testified that they served their Dispute Resolution package on December 31, 2014 via registered mail. The tenants have made a request for more time to make an application to cancel a Notice to End Tenancy. Their response to the 1 Month Notice must be filed within 10 days. I accept the testimony of the tenants with respect to the date they received the landlords’ package. Given my finding of the date of deemed service and that the tenants filed their application within 10 days of December 22, 2014, I find the tenants’ application filed within time. For this reason, I dismiss the tenants’ application for more time to file their application to cancel the 1 Month Notice as I find their application was filed within the time limits established under the *Act*.

Issues to be Decided

Should the landlords’ 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession for cause?

Are the tenants entitled to another remedy under the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy was described on the residential tenancy agreement as a month to month tenancy. However, the landlord HS testified that this tenancy was to be for a term of one year, by verbal agreement of both parties. The tenancy began on September 1, 2013. The rental amount of \$1800.00 is payable on the first of each month. The landlords continue to hold a security deposit in the amount of \$900.00 paid by the tenants on August 30, 2013 and a pet deposit in the amount of \$900.00 paid by the tenants on September 1, 2013. An addendum to that tenancy agreement stated;

RENT: Tenant will pay the owner each month during this agreement \$1800.00 as rent for the premises. Each payment shall be due on or before the first day of each month via post-dated cheques. If the payment is not received by the owner by 5:30 pm on the fourth day of the month a late charge of five percent (5%) will also be due.

The landlord RK testified that, at the beginning of this tenancy, the tenants were aware that the landlords would be returning to the property at the end of the year. The landlord RK testified that the tenants advised the landlords, on signing the rental agreement, that they were doing renovations on their own home and only needed the rental premises for a year.

In this case, the landlords provided three grounds for cause to end the current tenancy in the 1 Month Notice including the allegations that the tenants are;

- repeatedly late paying rent;
- significantly interfering with or unreasonably disturbing another occupant or the landlord;
- putting the landlord's property at significant risk.

The landlord RK testified and the tenants conceded that they have consistently paid rent late. On March 1, 2014, \$1700.00 was paid in rent with \$100.00 remaining outstanding. On April 2, 2014 and May 5, 2014, rent due on the first of the month was paid late. On July 2, 2014, rent was paid late. On November 3, 2014, rent was paid late. The landlord RK also testified that the tenants have not provided post-dated cheques as their tenancy agreement stipulates. There was documentary evidence provided, including correspondence from the tenants to provide a variety of reasons for not paying rent on time and not providing post-dated cheques.

The landlord RK testified that the tenants have caused difficulties for the downstairs tenants and the landlords by making assertions that there is mold within the rental unit. On November 4, 2014, the tenants evacuated themselves and the downstairs neighbours without notifying the landlords, claiming that the mold was too severe to reside within the rental unit. After being advised of the tenants' concerns, the landlords, contacted an environmental assessment company and arranged for an inspection of the rental unit. The landlords provided a copy of an inspection determination in relation to mold in the unit. The landlords provided an inspection report from that company and it stated,

- Inspection for mold performed on November 10, 2014;
- Inspection included the walls within the bedroom and other areas of the residence including the garage;
- Inspection found no visible mold growth and no evidence of previous mould growth
- Inspection found elevated moisture levels likely as a result of high humidity and condensation from an inadequate amount of air was exiting heat registers;
- It was believed that the lack of heat and airflow into the spare bedroom created the condensation issue and pooling on the windowsill;
- Inspection found the electrostatic filter within the furnace had heavy dust deposition, causing flow restriction.
- It was recommended electrostatic filter be changed.

Another heating professional provided a letter indicating that electrostatic filters had been provided to the tenants but, on inspection, had not been changed during their tenancy.

Testimony of the both landlords as well as documentary evidence, including statements from service providers, indicate that the tenants do not follow requests of the landlords regarding maintenance of the premises and property. For example, the tenants left garbage out leading to nuisance animals on the property. On one occasion, a bear came onto the property and destroyed the fence surrounding that property. The testimony of both landlords and the documentary submissions from service providers also indicates that the tenants regularly make it difficult to enter the suite for inspections or repairs.

The landlords also provided correspondence from their realtor indicating that, on showing the house in October 2014, the unit was "disgusting", "dirty" and "in poor condition". He also indicated in his correspondence to the landlords that the house

would have sold if it had been able to be 'shown properly'. Finally, this realtor provided a letter in contemplation of this hearing that stated he was unable to complete a photo shoot to list the landlord's property for sale because the tenant AS would not let him access the entire rental unit and parts that were accessed were too messy and dirty to take pictures of.

Tenant HS testified that she stays home with her children and that this limits her ability to complete certain tasks. Tenant HS testified that she was unable to open a chequing account or go to the bank on certain occasions to arrange for rent payment on time. While Tenant HS testified that she cannot go to the bank, she also testified that her mother works at the bank and does her banking for her. She testified that she did put six months' worth of post-dated cheques in the mail but that they must have gotten lost in the mail. There was more than one occurrence impacting payment of rent or providing cheques where tenant HS indicates items meant for the landlords were lost in the mail, both in correspondence to the landlords and in testimony at this hearing.

Tenant AS testified that he believes there are real mold issues within the residence but claims that he had cleaned up the premises when the inspector came to view the residence so the mold wasn't identifiable at that time. He testified that the inspection letter indicates that there is the possibility of mold within the rental unit but was unable to identify the direct portion of the letter that supported this claim. He referred to the mention of decreased heat flow and increased condensation, stating that this had created poor living conditions for the tenants.

The landlords provided documentary materials that referenced Tenant AS communicating angrily to the landlord RK and, on occasion, to service providers. Tenant AS denied that he had been difficult with any service providers but testified that he did get angry with landlord RK on more than one occasion, yelling at her by phone or on voicemail as well as sending angry text messages.

The tenant's advocate made full submissions with respect to the assertions of the landlords. He submitted that;

1. The tenant's rent was often only 1 or 2 days late and the tenants always made efforts to pay on time. He further submitted that the tenants provided reasons for any delay in payments. He offered that the bank itself may delay payments, based on the nature of their system, putting payments made late in the day through on the following day.
2. The tenants assert that there is a mold issue in the residence that needed and needs to be addressed. He submitted that the tenants notified the downstairs tenant as a courtesy and that they made efforts to advise the landlords when

they vacated the residence. In their application for another remedy under the *Act*, they seek to have the landlords remedy this situation.

3. The tenants make reasonable attempts to ensure they are able to accommodate realtor visits and showings. He relied on the testimony of the two tenants indicating that they struggled with showings of the premises because of their children and schedule.

Analysis

In an application by a tenant to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice to end tenancy. In this case, the landlords provided three grounds to end the current tenancy for cause in accordance with section 47(1) of the *Act* for the following reasons as the landlords maintained that the tenants are:

- repeatedly late paying rent;
- significantly interfering with or unreasonably disturbing another occupant or the landlord;
- putting the landlord's property at significant risk.

Analysis – Repeated Late Rent

In these circumstances, the landlords' sworn testimony and documentary evidence maintained that the tenants have repeatedly paid rent late. The tenants did not dispute this evidence but provided reasons to explain any late payment. The tenants also submitted that their rent is normally "only a couple days late".

The *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline No. 38 provides three late payments as the minimum number of late payments to sufficiently justify a notice under these provisions. The Guideline also states that ...

it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

In this matter, the late payments are not far apart. The tenants have been late with rent on four occasions in the last year, in a brief period of time. Again, most recently, the tenants were late with rent in November 2014.

The Guideline states that the inconvenience of the landlord is not the determining factor in deciding whether an end to tenancy can be justified by late payment of rent. It is, in fact, not a consideration. Simply paying rent late regularly, on three occasions or more, is justification to end a tenancy. The submission that the payments are “only a couple of days late” or that the landlords were minimally inconvenienced is not relevant to this ground of the landlords’ notice. The landlord has the authority to end a tenancy based on the late payment of rent, in three instances or more, concurrent or not.

Based on the undisputed evidence with respect to late payment of rent and in accordance with section 47(1)(b) of the *Act* and Policy Guideline 38 regarding the late payment of rent, I find that the tenants have paid their rent late regularly. This finding justifies the end of the tenancy by the 1 Month Notice provided by the landlords.

Given that I find that the tenants are repeatedly late in paying their rent, I need not consider the other grounds provided by the landlords in their notice to end tenancy. However, to ensure clarity with respect to this decision, I will provide comment on the second ground: significantly interfering with or unreasonably disturbing another occupant or the landlord.

Analysis – Unreasonable Disturbance, Significant Interference

The landlords provided substantial evidence, in testimony and in documentary form, that support the claim that the tenants have disturbed the landlords and other occupants of the residential property by; unacceptable communications; failing to allow the premises to be accessed by service providers or to be shown by the landlord’s realtor; and by pressing the landlords with claims relating to mould after an inspection of the premises.

Tenant AS acknowledged that he has spoken angrily to the landlords. I accept the evidence of the landlords, supported by documentary evidence, that the tenants limit or deny access to service providers, including the landlord’s realtor. The documentary evidence also provides information that the downstairs tenant has been disrupted by these tenants on more than one occasion, in a dramatic way. I find that this behaviour and these disruptions, particularly with regard to the access by service providers, to be a significant interference with the landlord, and the other occupant.

Based on my finding that there are valid grounds for the notice to end tenancy, I dismiss the tenants’ application for a cancellation of the notice to end tenancy. I grant the landlords’ application for an Order of Possession.

I dismiss the tenants' application for any other remedies under the *Act* as contemplated by them, with respect to action on the allegations of mold within the premises.

As well, I dismiss the tenants' application to recover their filing fee.

Conclusion

I find the application for more time to apply to cancel the landlords' 1 Month Notice unnecessary and I dismiss that application.

I dismiss the tenants' application to cancel the notice to end tenancy.

I dismiss the tenants' application for any other relief under the *Act*.

I dismiss the tenant's application to recover their filing fee for this application.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

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: January 30, 2015

Residential Tenancy Branch

