



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, FF

Introduction

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

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. As such, I find that both parties have been properly served as per sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession as a result of the 1 Month Notice for cause?

Is the landlord entitled to a monetary order for recovery of the filing fee?

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced

here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 1, 2005 on a fixed term tenancy ending on March 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated September 17, 2005. The monthly rent is \$1,450.00 payable on the 1st day of each month and a security deposit of \$725.00 was paid.

The landlord seeks an order of possession as a result of a 1 Month Notice dated June 28, 2016 and recovery of the filing fee. The tenants seek an order cancelling the 1 Month Notice dated June 28, 2016 and recovery of the filing fee.

On June 28, 2016, the landlord served the tenants with the 1 Month Notice dated June 28, 2016 by placing it in the tenants' mail box. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2016 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord stated that the tenants have a home business fixing cars in the garage and the parking lot of the rental property which has put the landlord's property at significant risk. The landlord has provided photographs showing multiple cars parked in the parking lot and two in the garage under repairs. The landlord provided affirmed testimony that the cars have oil which can ignite and cause a fire. The tenants disputed this claim stating that there is no significant risk to the rental property due to the car repair business.

The landlord also stated that it is an illegal activity to have a home business operating within the rental property. The tenant disputed this claim. The landlord has referenced a condition of the signed tenancy agreement in which the tenants are not to operate any commercial business on the rental site. The landlord failed to provide a copy of the condition as well as clarify how this "illegal activity" would apply as a significant risk to the landlord's property.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the evidence of both parties and find on a balance of probabilities that the landlord has failed to provide sufficient evidence that the tenants have put the rental property at significant risk. The landlord has claimed that the tenant is operating a home car repair business which is placing the rental property at risk. The landlord has not provided any specific details of any action or neglect of the tenants that would place the rental at significant risk. The landlord's photographs depict multiple cars parked in the parking lot as well as 2 cars parked in the 2 car garage. The landlord has only referenced that there is oil present with cars and that this poses a risk to the property, but not how. The landlord was unable to provide clarification of how the presence of oil with regularly parked cars in a parking lot would be different. As such, I find that this reason for cause has not been established by the landlord and is dismissed.

The landlords second and third reasons for cause is for "illegal activity" in that the tenants are operating a home care repair business.

Policy Guideline #32 defines "illegal activity" and states;

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

...In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

...The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance

of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

In this case, the landlord has alleged that the “illegal activity” is that of the tenants operating a home car repair business. I find that this falls well short of the any serious violations of any federal, provincial or municipal law. The landlord has failed to provide sufficient evidence of illegal activity to justify the 1 Month Notice. The tenant’s application to cancel the 1 Month Notice is granted. The 1 Month Notice dated June 28, 2016 is set aside and the tenancy shall continue.

The tenants having been successful in their application are entitled to recovery of the \$100.00 filing fee.

Conclusion

The 1 Month Notice dated June 28, 2016 is set aside. The tenancy shall continue.
The landlord’s application is dismissed without leave to reapply.
The tenants’ application to cancel the 1 Month Notice is granted.

I find that as the tenancy continues that the tenants may withhold one-time \$100.00 from the next months’ rent upon receipt of this decision as compensation for recovery of their 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: August 17, 2016

Residential Tenancy Branch