



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and OLC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for orders as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 *Act*; and
- an Order for the landlord to not raise the rent above the legislated amount of 3.7% pursuant to section 62 of the *Act*.

The tenant “AP”, her advocate “NC”, and the landlord “SD” were present at the hearing. The tenant stated that she would like to be represented at the hearing by her advocate (“the advocate”). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions evidence under oath.

Based on the sworn testimony at the hearing, I accept that the landlord was properly served by the tenant with the Application for Dispute Resolution hearing package (“Application for Dispute”) as per section 89 of the *Act* and that the tenant was properly served by the landlord with the 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) and their evidentiary package pursuant to section 88 of the *Act*.

Issue(s) to be Decided

- Should the landlord's 1 Month Notice be cancelled? If not, should an Order of Possession be issued for cause?
- Should the landlord be directed to only raise rents pursuant to the legislated amount of 3.7%?

Background and Evidence

A copy of the Residential Tenancy Agreement was provided to the hearing. The landlord confirmed that monthly rent was set at \$575.00, due on the first of every month. The tenancy began on March 1, 2014 and has continued on a month to month basis. A security deposit of \$287.50 was collected at the outset of the tenancy and continues to be held by the landlord.

The landlord served the tenant on November 28, 2016 with a 1 Month Notice for Cause. On the notice served to the tenant, the landlord cited three reasons for his issuance of the notice.

- i) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- ii) The tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant
- iii) The tenant has jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testified that he issued the 1 Month Notice due to two incidents that had occurred in the backyard of his rental property. The landlord explained that the tenant occupies the basement suite of the house, while the main floor is rented by a family of six people. The landlord stated that he has received complaints from both his neighbours and the main floor tenants concerning incidents that have occurred in the backyard of the property.

Specifically of most concern, the landlord cited an incident that occurred in “the summer” of 2016 where the police were called to the premises due to a large crowd that had gathered in the backyard of the property resulting in a disturbance to the neighbours and the main floor tenants. The landlord said that his neighbour called the police and that a person was removed from the property by the police. Little evidence was presented at the hearing of a second incident.

The tenant disputed the landlord’s recollection of the time frame associated with this incident and explained that a person was driven home by the police but not arrested on the property. The tenant said that this occurrence involving the police took place in January 2016, not in the “summer” as was put forward by the landlord.

The tenant maintained that she had use of the backyard, while the landlord disputed this fact. The tenancy agreement produced for the hearing is silent on this issue.

Analysis – 1 Month Notice

Having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy. Based on the landlord's testimony, I am satisfied that an incident did occur at some point in 2016 whereby the main floor tenants were disturbed. Specifically, the landlord was unable to tell me when exactly this incident occurred. Evidence provided by the landlord in the form of a letter from the main floor tenant put the date of the incident being in "the summer (July or August)." Furthermore, the letter submitted by the landlord and the main floor tenants are both dated December 7, 2016, yet detail separate incidents. One involves a large group of people and another involves a fight with a boyfriend. This leads me to question why the landlord and tenant waited until December 2016, and after the 1 Month Notice was issued, to record safety and security issues and why warnings were not raised prior to this date. Due to the conflicting incidents recorded on the letters it is impossible to know which event the landlord is hoping to draw attention to.

Policy Guideline #6 of the *Residential Tenancy Policy Guideline* notes that "temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment." I appreciate that the main floor tenant is concerned for the safety of his children; however, little detail was provided surrounding this 2016 incident. The time of day on which it occurred, the length of time that it went on for and the nature of the incident are left open to interpretation.

I accept the landlord's testimony that his neighbour has been dealing with a medical emergency and was unable to provide evidence of the incident that he witnessed. Overall the landlord's evidence remains weak. No warning letters were provided to the tenant concerning the landlord's concerns and no evidence was presented detailing any *significant* interference that was experienced by the main floor tenants. The landlord stated that he has given "numerous" warnings to the tenant, however; these warnings concerned her use of the backyard, versus any disturbances for which she may be responsible. For these reasons, I am not convinced that the landlord has provided sufficient grounds for ending this tenancy for the first or third grounds cited above in the landlord's 1 Month Notice.

With regards to the landlord's claim that the tenant is engaging in illegal activity, I refer to the *Residential Tenancy Policy Guideline #32* concerning Illegal Activities. Here it is noted that;

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence 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.

Based on the evidence and testimony presented at the hearing, I am not satisfied that the tenant is engaging in any illegal activity.

The tenant should be cautioned about the number of persons that she permits on the property as well as the type of behaviour in which her guests engage. The landlord's failure to produce specific detailed information concerning the incident that occurred, should not be taken as a sign that the landlord will not be more vigilant in the future regarding issues of disturbances faced by other occupants of the property. A further serious incident could lead to the end of this tenancy.

Section 62 – Landlord to Comply with the Act

The tenant testified that the landlord called her to inform of a \$150.00 notice of rent increase on her rent of \$600.00. A telephone call is not within the prescribed forms for increasing rent as described in section 42 of the *Act*. This rental increase is clearly above the legislated allowable limit of 3.7%.

Section 43 of the *Act* states that the landlord may impose a rent increase *only* up to

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

I refer the landlord to <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases> so that he may gather further information on

the allowable rent increases prescribed by the legislation and the proper process for notifying a tenant of a rent increase.

Based on the evidence before me, I find that the landlord has failed to follow the process for obtaining any rent increase for this rental unit. I find that the monthly rent remains at \$600.00 for this tenancy until this rent is revised in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The 1 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant was successful in her application to have the landlord comply with the *Act* pursuant to section 62. The landlord is directed to only increase the rent within the allowable legislated limit. The current monthly rent remains at \$600.00, until revised 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: January 17, 2017

Residential Tenancy Branch