



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on December 09, 2016 the Application for Dispute Resolution, the Notice of Hearing, and four pages of evidence submitted to the Residential Tenancy Branch with the Application were personally served to the Landlord. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 10, 2017 the Tenant submitted 7 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were posted on the Landlord's door on January 11, 2017 or January 12, 2017. The Landlord stated that he located this evidence on January 10, 2017 and it was accepted as evidence for these proceedings.

The Landlord submitted no evidence to the Residential Tenancy Branch.

Both parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Should a portion of the security deposit paid by the Tenant be returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in November of 2014; that the Tenant agreed to pay rent of \$600.00 by the first day of each month; and that rent is paid directly to the Landlord by the Provincial Government.

The Tenant submitted a copy of a One Month Notice to End Tenancy for Cause, dated December 01, 2016, which declares that the Tenant must vacate the rental unit by December 31, 2016. The Notice to End Tenancy declared that the Landlord wished to end the tenancy because the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and the tenant has knowingly given false information to a prospective tenant or purchaser of the residential property.

The Landlord stated that the One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on December 01, 2016. The Tenant stated that she located this Notice to End Tenancy on her door on December 02, 2016 or December 03, 2016.

The Landlord stated that he is attempting to end this tenancy, in part, because the Tenant has too many people coming to her rental unit on a regular basis. He stated that approximately two men come to her door every day; often one in the morning and one in the afternoon. He speculates that she is operating a business out of the rental unit, although he stated he does not know the nature of the business.

The Tenant stated that she often has male and female guests in the evening; that she rarely has guests during the day; and that her guests never stay overnight.

The Landlord stated that he is attempting to end this tenancy, in part, because sometime in November of 2016 another occupant of the residential complex told him there had been a fight/disturbance in the rental unit. He stated that this occupant told him he knocked on the Tenant's door on the evening of the disturbance and was told that everything was fine. He stated that he did not discuss this alleged disturbance with the Tenant.

The Tenant stated that there was no disturbance in the rental unit in November of 2016. She stated there was an argument in the rental unit in October of 2016 but she was never informed, either by the Landlord or by a neighbour, that the argument had disturbed others.

The Landlord stated that he is attempting to end this tenancy, in part, because approximately one month ago another occupant of the residential complex told him he had to pick up dog feces from the yard of the residential property. He stated that he subsequently told the Tenant that her guest's dog was not allowed on the residential

property and he does not think there have been further concerns with the dog since he discussed the dog with the Tenant.

The Tenant stated that a guest's dog defecated on the residential property on one occasion; the Landlord subsequently told her that the dog was not allowed on the property; the dog now stays in a vehicle when this guest is visiting; and that the dog has not defecated on the property since this issue was brought to her attention.

The Landlord stated that he is attempting to end this tenancy, in part, because:

- on one occasion he witnessed an unknown male knocking on the Tenant's door, when it appeared the Tenant was not home;
- shortly thereafter his briefcase was stolen from a room near the Tenant's rental unit;
- at the time of the theft the front door to the residential complex was not locked;
- surveillance video show that the male knocking on the Tenant's door stole the briefcase; and
- he showed the surveillance video to the Tenant, who informed him that she did not know the male who was knocking on her door.

The Tenant stated that she has viewed the surveillance video of the male knocking on her door and she does not know that individual.

The Landlord stated that he is attempting to end this tenancy, in part, because the Tenant had lied to him about having frequent guests. He acknowledged that she did not present false information to a prospective tenant or a prospective purchaser.

The Landlord and the Tenant agree that the Landlord served the Tenant with a letter, dated October 27, 2016, a copy of which was submitted in evidence. In this letter the Landlord declared that the Tenant must vacate the rental unit before November 30, 2016 because the Landlord intends to move into the unit.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$500.00 in November of 2014. The Tenant is seeking to recover \$200.00 of the \$500.00 security deposit that was paid.

Analysis

Section 47 of the *Act* authorizes landlords to end a tenancy for a variety of reasons. To end a tenancy pursuant to section 47 of the *Act*, landlords must provide tenants with written notice to end the tenancy on the proper form and they must declare the reasons for ending the tenancy. The burden of proving there are grounds to end a tenancy rests with the landlord.

Section 47(1)(c) of the *Act* authorizes a landlord to end a tenancy if there are an unreasonable number of occupants in the rental unit. Residential Tenancy Branch Policy

Guideline #13 defines an “occupant” as a person who the Tenant allows to live in the rental unit.

I find that no evidence was presented that shows the Tenant has allowed a third party to live in the rental unit. I therefore find that the Landlord has failed to establish that there are an unreasonable number of occupants in the rental unit and that the Landlord, therefore, has not established that he has grounds to end this tenancy pursuant to section 47(1)(c) of the *Act*.

I note that even if I were to conclude that the Tenant had frequent guests I would still conclude that the Landlord did not have grounds to end this tenancy pursuant to section 47(1)(c) of the *Act*, as guests that do not reside in the rental unit are not “occupants”, as that term is defined by Residential Tenancy Branch Policy Guidelines.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if the tenant or a guest of the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential complex.

Even if I accepted that the Tenant has frequent visitors, I find that the Landlord has failed to establish that the number of visitors have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential complex. In reaching this conclusion I was heavily influenced by the absence of any evidence that shows the frequency of the visits have caused a disturbance of any significance.

I find that the Landlord has submitted insufficient evidence to establish that an occupant of the rental unit was disturbed by a fight/disturbance in the rental unit in November of 2016. In reaching this conclusion I was heavily influenced by the absence of evidence, such as evidence from the resident who was allegedly disturbed, that corroborates the Landlord’s testimony that there was a disturbance in November or that refutes the Tenant’s testimony that there was not a disturbance in November of 2016.

On the basis of the testimony of the Tenant I accept that there was a disturbance in the rental unit in October of 2016. In the absence of evidence from another occupant of the residential complex, however, I find that the Landlord has submitted insufficient evidence to establish that this disturbance disturbed another occupant of the residential complex.

On the basis of the undisputed evidence I find that a dog belonging to a Tenant’s guest has defecated on the residential property and that the waste was picked up by another occupant of the residential complex. As the Tenant has taken reasonable steps to prevent the dog from defecating on the residential property after the issue was brought to her attention, I find that failing to pick up dog waste does not constitute an unreasonable disturbance. Had the Tenant continued to leave dog waste on the property after being advised not to allow the dog on the residential property, I find that her tenancy may have been in jeopardy.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant knows the male who allegedly stole the Landlord's briefcase. In reaching this conclusion I was heavily influenced by the Tenant's testimony that she has seen the surveillance video and she does not know this individual and by the absence of evidence that refutes that testimony. I find that even if the Tenant did know this individual there is no evidence that he was there at the invitation of the Tenant, given that she was not home at the time of the theft. Given that there is no evidence that the individual was in the complex at the invitation of the Tenant, she could not be held responsible for his actions while he was at the residential complex.

I find that the Tenant has failed to establish that there are grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*.

Section 47(1)(j) of the *Act* authorizes a landlord to end a tenancy if the tenant knowingly gives false information about the residential property to a prospective tenant or prospective purchaser viewing the residential property. As there is no evidence that the Tenant gave false information to a prospective tenant or prospective purchaser of the residential property, I find that the Landlord has failed to establish grounds to end this tenancy pursuant to section 47(1)(j) of the *Act*.

Section 49 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons, including that the landlord wishes to occupy the unit. To end a tenancy pursuant to section 49 of the *Act*, a landlord must provide a tenant with notice to end the tenancy that complies with section 52 of the *Act*.

Section 52(e) of the *Act* stipulates that to be effective a notice to end tenancy, when served by the landlord, must be in the approved form. The approved form for ending a tenancy pursuant to section 49 of the *Act* is RTB-32. I find that the letter, dated October 27, 2016, was not proper notice to end the tenancy in accordance with section 49 of the *Act*, because it was not served on the approved form, as is required by section 52(e) of the *Act*.

Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead does not invalidate the form used. I find that the letter dated October 27, 2016 deviates significantly from the approved form as it is missing highly relevant and significant information, including the fact that the Tenant has the right to dispute the notice to end tenancy and that the Tenant is entitled to one month's free rent.

As there is no evidence that the Landlord served the Tenant with proper notice to end the tenancy pursuant to section 49 of the *Act*, I find that this tenancy had not ended pursuant to section 49 of the *Act*.

Section 19(1) of the *Act* stipulates that a landlord must not accept a security deposit that is more than $\frac{1}{2}$ of the monthly rent. As the monthly rent for this rental unit is \$600.00, I find that the Landlord was only entitled to collect a security deposit of up to \$300.00.

Section 19(2) of the *Act* stipulates that if a landlord collects more than is permitted under section 19(1) of the *Act*, the tenant may deduct the overpayment from rent or otherwise recover the payment. On the basis of the undisputed evidence I find that the Tenant paid a security deposit of \$500.00, which is \$200.00 more than the Landlord was entitled to collect. As the Tenant's rent is paid directly to the Landlord by the Provincial Government, I find it appropriate to grant the Tenant a monetary Order for the \$200.00 security deposit overpayment.

I note that no interest is due on a security deposit that was collected in 2014.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47 of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause, dated December 01, 2016. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant has established a monetary claim of \$200.00, which represents a refund of the security deposit overpayment, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 16, 2017

Residential Tenancy Branch