



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Monterey Claim

With respect to the tenants' monetary claim, I find that Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution hearing, if the arbitrator determines it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find the most pressing matter in the tenants' application is the request to cancel the 1 Month Notice. Because the tenants claim for damages is made under section 67 of the *Act*, I find this part of the application is distinct from the tenants request that the 1 Month Notice, be canceled pursuant to section 47 of the *Act*.

Accordingly I find the monetary portion of the tenants' application must be severed and the monetary claim must be dealt with separately through an application under 67 of the *Act*. Therefore the portion of the tenants' application seeking a monetary order is dismissed.

Issue(s) to be Decided

Are the tenants entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

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

Background and Evidence

As per the submitted tenancy agreements and testimony of the parties, the tenancy began on August 1, 2015 on a fixed term until July 31, 2016 at which time the tenancy was renewed for another fixed term until July 31, 2017. Rent in the amount of \$1,600.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$787.50 and a pet deposit in the amount of \$787.50 at the start of the tenancy, which the landlord still retains. The tenants continue to reside in the rental unit.

Tenant GG's father (the "witness") testified that on November 30, 2016, while working on his personal boat in the tenants' garage, a fire erupted. The witness testified that the fire was a result of a fuel leak which was ignited by a trouble light he had been using. The fire department was called and attended the unit at 7:12pm.

On March 11, 2017, the tenant and landlord signed a mutual agreement that the tenant could give one month notice to end the fixed term tenancy set to end July 31, 2017. The agreement stipulates the "end term of the lease remains in effect" and the tenant will "vacate the premises as of July 31, 2017 as the landlord wishes to have a family member move in to the property on this date." The parties agree that the landlord did not issue an approved 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice").

The tenants confirmed receipt of the landlord's 1 Month Notice dated March 13, 2017. The grounds to end the tenancy cited in the 1 Month Notice are;

- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property

- the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

In relation to the March 11, 2017 mutual agreement, the landlord testified that this agreement was made without reviewing the tenancy agreement addendum and after doing so she realized she could issue the 1 Month Notice based on the tenants' violation of the tenancy agreement addendum. It is the landlord's position that the tenants put her property at significant risk when they allowed the witness to perform work on the boat inside the enclosed garage. The landlord testified that as a result of the fire, the property has sustained \$30,000.00 in damage and her insurance has been increased by 15 percent for the next three years. The landlord contends that the illegal activity that led to the damage was the tenants' storage of the boat which is in direct contravention of the tenancy agreement addendum.

The tenants dispute the garage door was closed when the witness was working on the boat, it is their position the garage door was open and the fire was the result of an unintentional fuel leak. The tenants acknowledge that as a result of the fire, the garage sustained smoke damage, a burnt ceiling, and damaged garage door as well as some smoke damage just inside the interior garage door. The tenants' dispute the boat was stored in the garage and provided witness testimony which confirmed the boat was stored elsewhere. Lastly, the tenants contend that even if the boat had been stored, this was not in direct contravention of their latest tenancy agreement addendum.

Analysis

Although the parties signed a "mutual agreement" in relation to the fixed term and the landlord made mention of a family member moving in, I find this agreement does not restrict the landlord's ability to serve a 1 Month Notice under section 47 of the *Act*.

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property or the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property. The onus is on the landlord to prove the reasons behind the notice. The landlord provided evidence in the form of emails, photographs, tenancy agreements and testimony.

The tenants do not dispute that tenant GG's father, who was permitted on the property by the tenants caused a fire which caused damage to the rental unit. In the absence of evidence to the contrary, I find that tenant GG's father was negligent by failing to take preventive measures while working on his boat, to ensure the landlord's property was

not put at risk. For this reason, I dismiss the tenants' application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenants' application has been dismissed I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenants' application for a monetary order is dismissed with leave to reapply.

The tenants' application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective **April 30, 2017 at 1:00 p.m.**

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: April 25, 2017

Residential Tenancy Branch