



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, ERP, PSF, RR

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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties 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 individual identified as the landlord in this matter is the agent representing the interests of both co-owners of this property, who joined the teleconference with their agent shortly after this hearing commenced. Any references to orders requiring the landlord to take action are to be extended to the two co-owners, who are also landlords for the purpose of these orders.

Tenant RTC (the tenant) confirmed that on November 24, 2017, the tenants received the landlord's 1 Month Notice sent by registered mail. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 1 Month Notice on that date.

As the landlord's agent (the agent) testified that the landlord was handed a copy of the tenants' dispute resolution hearing package in December 2017, I find that the landlord has been duly served with this package in accordance with section 89 of the *Act*.

Since both parties confirmed that they had received one another's extensive written and photographic evidence packages, I find that these packages were duly served to one another in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to a reduction in their monthly rent? Should any orders be issued to the landlord requiring the landlord to abide by the *Act*, the *Regulation* or the terms of the tenancy agreement for this tenancy? Should any other orders be issued with respect to this tenancy?

Background and Evidence

On November 2, 2017, the parties signed a one-year fixed term tenancy agreement and addendum that established a tenancy that is to last from November 1, 2017 until October 31, 2018. The tenants reside at the ground level of this two unit building and the co-owners of the property live in the other part of this building above the tenants. Monthly rent is set at \$1,550.00, payable in advance on the first of each month. The co-owners continue to hold the tenants' \$775.00 security deposit paid when this tenancy began. A \$425.00 pet damage deposit initially paid by the tenants has already been returned to the tenants as the tenant discovered shortly after this tenancy began that he is allergic to cats. The tenants' cat had to be relocated elsewhere.

The tenants' monthly rent payment was to include use of the co-owners' washer and dryer. When Tenant PM first viewed this prospective rental, the co-owners noted that access to the washer and dryer would be one day per week. Tenant PM confirmed that the tenants selected Tuesday as the day when the tenants would have access to the washer and dryer in a portion of this residence that was otherwise used by the landlords. The male co-owner testified that the co-owners have withheld access to their washer and dryer since December 2017, and after undertaking repairs so as to address other concerns raised by the tenants and concerns of the co-owners with respect to smells emanating from this previous common area.

The landlord's 1 Month Notice identified the following reasons for seeking an end to this tenancy for cause by December 31, 2017:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. After considerable sworn testimony was heard and written evidence referenced by the parties, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties, including the co-owners (included below as landlords) who were in attendance, agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 31, 2018, by which time the tenants will have surrendered vacant possession of the rental unit to the landlord.
2. The landlords agreed that the tenants may end their tenancy without penalty after providing 24 hours written or emailed notice to the landlords. In that event, the landlords agreed that they will pro-rate a rental rebate amount to be returned to the tenants for the remainder of any partial month where monthly rent has already been paid by the tenants.
3. The landlords agreed that the monthly rent for February and March 2018 will be reduced to \$1,250.00.
4. The landlords agreed that they will not initiate any monetary claim for unpaid rent or loss of rent from the period from April 1, 2018 until October 31, 2018, the scheduled end date for this fixed term tenancy, provided that the tenants abide by their commitment to vacate the rental premises by March 31, 2018.
5. The tenants agreed that they will abide by the no smoking provisions of their tenancy agreement and will not use a scent generator in this rental property.
6. The parties agreed that they will continue to abide by the existing status quo regarding arrangements regarding the use of the washer and dryer, and the tenants' right to park on the left side of the driveway.

7. The landlords agreed to direct their security cameras towards their truck and motorcycle so as not to purposefully infringe upon the tenants' privacy.
8. The parties agreed that the return of the tenants' security deposit will be subject to the standard provisions of the Act.
9. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion.

Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord(s) if the tenants do not vacate the rental premises in accordance with their agreement by 1:00 p.m. on March 31, 2018. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order that the monthly rent for February and March 2018 be reduced to \$1,250.00.

I order the tenants to refrain from smoking or using a scent generator inside this building.

I order that the existing arrangements regarding use of the left side of the driveway by the tenants is to be continued for the remainder of this tenancy. As the tenants no longer have access to the laundry area of this property and in exchange for their reduction in rent, I order that tenant access to the landlord's washer and dryer no longer forms a part of this tenancy agreement.

I order the landlord to ensure that the security cameras be directed so as to provide security for the landlord's truck and motorcycle, but to minimize to the extent possible views of the tenants' rental unit.

To give effect to Clause 2 of the settlement agreement as outlined above, I order that this tenancy ends as of March 31, 2018, and that the landlords have no recourse to a monetary claim for unpaid rent or loss of rent for the period from April 1, 2018 until October 31, 2018, provided that the tenants vacate the rental unit by March 31, 2018.

I allow the tenants to provide 24 hours written or emailed notice to end their tenancy so as to enable them to vacate the rental unit before March 31, 2018, should they find suitable accommodation before that date. In that event, I order the landlord to return the pro-rated amount of the rent for the month in which the tenants vacate the rental unit prior to March 31, 2018.

The standard provisions regarding the return of the tenants' security deposit remain in effect for this tenancy.

So as to ensure a peaceful and safe final segment of this tenancy, I encourage the tenants and co-owners to minimize to the extent possible their interactions with one another. I recognize that this may be difficult to achieve when parties live in close proximity to one another. I trust that the commitment that both parties demonstrated in seeking an end to this tenancy on terms that are acceptable to both parties will extend to the remainder of this tenancy.

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 26, 2018

Residential Tenancy Branch