



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- 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 provided affirmed testimony. The landlord's agent, S.B. attended on behalf of the named landlord however no documentary evidence has been submitted authorizing her appearance. The landlord's agent, S.B. stated that she has been given authority by her husband, G.B. who has power of attorney to act on all matters on behalf of the named landlord. Both tenants stated that they were aware of who S.B. was and did not object to the landlord's agent acting on behalf of the named landlord. Both parties agreed that the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also agreed that the landlord served the tenants with the submitted documentary evidence provided. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue

At the outset it was clarified that the tenants request for an order for the landlord to comply with the Act, regulations or tenancy agreement was an error as it pertains to

their reason for dispute of the 1 Month Notice. As such, no further action is required for this portion of the tenants' application.

Issue(s) to be Decided

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

Are the tenants entitled to 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 applicant's claim and my findings are set out below.

This tenancy began on September 1, 2016 on a fixed term tenancy ending on August 31, 2017 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 23, 2016. The monthly rent is \$1,400.00 payable on the 1st day of each month. A security deposit of \$700.00 was paid on August 18, 2016.

Both parties agreed that the tenants were served with a 1 month notice dated April 30, 2018 in person on April 30, 2018. The 1 month notice sets out an effective end of tenancy date of May 31, 2018 and provides for two reasons for cause selected as:

- the tenant has caused extraordinary damage to the unit.
- the tenant has not done required repairs of damage to the unit/site.

The landlord seeks to uphold the 1 month notice and obtain an order of possession to end the tenancy.

The landlord claims that the tenants caused burn damage to the patio deck of the rental space which melted the deck surface with a pot of hot oil. The tenants provided no comment on this claim. The tenant confirmed that an approximate 12 inch burn mark was the result of an accident. The tenant provided a photograph of the agreed upon damage.

The landlord also claims that a request to the tenants was made to make the repairs for the burned deck surface, but as of the date of this hearing the tenants have failed to make any repairs. The tenants argued that repairs to the limited common areas are controlled by the Strata and as such, the tenants are not authorized to make any

repairs. The tenants stated that they are willing to reimburse the landlord for repair work through their insurance. The landlord stated through a series of text messages and emails between the Strata/Landlord and Tenants that the tenants were given a request to make the repairs to the patio deck. The landlord also claims that authorization was given within these messages, but that a formal letter from the Strata was not issued until June 7, 2018 and given to the tenants on June 27, 2018.

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 undisputed evidence of both parties and find that damage was caused in the form of a burn mark approximately 12 inches on the patio deck. This is confirmed by the tenants' submitted photograph. However, the term "extraordinary" is defined as very unusual or remarkable. I find that damage caused by the tenants is not so "extraordinary" to cause an end to the tenancy. As such, this reason for cause selected by the landlord is set aside.

On the landlord's second reason for cause, the tenant has not done the required repairs of damage to the rental is clear. Both parties acknowledged that the tenants caused the damage. Both parties also acknowledged that the landlord made a request to the tenants to repair the damage. The tenants have argued that they have been prevented from doing so as per the Strata Bylaws and are willing to reimburse the landlord/Strata Council through their tenants' insurance. The landlord has claimed that through group text messages and emails the repairs were authorized by the Strata Council and the landlord to be made. The tenants' argue that it is not their responsibility to effect repairs. The landlord submits a copy of a formal letter from the Strata authorizing the landlord to take appropriate actions to make the repairs to repair the patio deck was received on June 7, 2018 and provided to the tenants on June 27, 2018. I accept that the he landlord made a demand for the tenants to make repairs to the patio deck twice. The tenants as of the date of this hearing have not made any repairs.

In this situation, I understand the tenants' consideration in not breaching the Strata Bylaws, but this is something for the landlord to consider as a demand has been made to the tenants by the landlord to make the repairs. Any situation arising from a Strata would be the responsibility of the landlord to respond to.

As such, I find that the landlord has established that the 1 Month Notice dated April 30, 2018 was properly served in person on April 30, 2018. I am satisfied based upon the submitted evidence of both parties that a request for the tenants to effect repairs was made. As such, I find that the landlord has provided sufficient evidence that the reason set out in the notice in which the tenants have not done the required repairs of damage to the rental unit. The 1 Month Notice dated April 30, 2018 is upheld. The tenants' application is dismissed.

Pursuant to section 55 of the Act, the landlord is granted an order of possession to take effect 2 days after being served with the order.

Conclusion

The tenants' application is dismissed.

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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 *Residential Tenancy Act*.

Dated: July 05, 2018

Residential Tenancy Branch