



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR FFT LRE OLC

Introduction

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

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 of the *Act*;
- to cancel a 10 Day Notice to End Tenancy for late payment of rent (“10 Day Notice”) pursuant to section 46 of the *Act*;
- an Order directing the landlords to comply with the *Act* pursuant to section 62 of the *Act*;
- an Order setting conditions on the landlord’s right to enter the rental unit pursuant to section 29; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord attended the hearing by way of conference call. The tenant was represented at the hearing by his agent, M.E. (the “tenant”), while the landlord was represented at the hearing by her counsel, T.H. All parties present were given a full opportunity to be heard, to present their testimony and to make submissions.

The tenant confirmed receipt of the landlord’s 1 Month Notice served on April 30, 2018 and of the landlord’s 10 Day Notice on May 2, 2018. The tenant is found to have been duly served with both notices to end tenancy in accordance with the *Act*.

Both parties confirmed receipt of each other’s evidentiary packages and the landlord confirmed receipt of the tenant’s application for dispute resolution.

Preliminary Issue – 10 Day Notice & Tenant’s application directing the landlord to comply with the *Act* pursuant to section 62 and setting conditions on the landlord’s right to enter the Rental Unit

Following opening remarks, counsel for the landlord explained that rent had been paid within five days of receipt of the 10 Day Notice issued on May 2, 2018. In accordance with section 46(4) of the *Act*, the 10 Day Notice issued on May 2, 2018 is of no effect.

This hearing which lasted 65 mins did not afford the tenant an opportunity to present submissions related to his application setting conditions on the landlord’s right to enter the rental unit and directing the landlord to comply with the *Act*. No submissions were heard on this matter; however, the tenant indicated that this was an important issue that he wished to pursue. *Residential Tenancy Rule of Procedure 2.3* states, “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

I find that the most pressing issue before me during the hearing was the tenant’s application to cancel the 1 Month Notice. I made no determination on the merits of the remainder of the tenant’s application, but I find that the tenant has a right under the *Act* to pursue this matter at a later date. I therefore, dismiss the tenant’s application directing the landlord to comply with the *Act* and setting conditions on the landlord’s right to enter the rental unit with leave to reapply.

Issue(s) to be Decided

Can the tenant cancel the landlord’s 1 Month Notice?

Can the tenant recover the filing fee?

Background and Evidence

Undisputed testimony provided by the tenant confirmed that this tenancy began on November 1, 2017. Rent was established at \$900.00 per month, and a security deposit of \$450.00 paid at the outset of the tenancy continues to be held by the landlord.

On April 30, 2018 the tenant was served with a 1 Month Notice to End Tenancy for Cause. The reasons cited on the 1 Month Notice were as follows:

- *Tenant has allowed an unreasonable number of occupants in the unit/site*
- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park*

Counsel for the landlord explained that the landlord and tenant had previously enjoyed a good relationship, which soured in the Spring of 2018 when a person not approved by the landlord began occupying the rental unit. Counsel argued that the presence of this other person had led to an increase in power use in the rental unit and that a large amount of wear and tear to the home had occurred since her arrival. As part of her evidentiary package, the landlord presented several photographs which she explained were evidence of this increased wear and tear. The landlord said that she had previously housed many tenants prior to E.T. and that she had never experienced such a buildup up of moisture and mould prior to the unit being occupied by two persons. Counsel presented the original advertisement for the rental suite which notes that it is suitable for one person. In addition, counsel argued that tenant E.T. was aware that the unit was only meant to be occupied by one person as the parties had previously had discussions in December 2017 when the tenant had allowed some guests to occupy the unit while he was out of town.

Counsel for the landlord stated that the landlord entered the tenancy agreement with the idea that only one person would be occupying the rental unit. He said that the unit was 480 square feet, had one bedroom and was served by a septic field. It was explained to the hearing that the person who now occupied the suite with tenant E.T. had arrived in early April 2018 and that tenant E.T. had informed the landlord via text message that “a woman will be staying for a bit.” Counsel argued that this person had ceased to be a guest, was now an occupant, and that they appeared to be set on remaining in the suite for an indefinite period of time.

The tenant did not dispute that another person had occupied the rental unit since April 2018; however, the tenant argued that the presence of another person in 480 square feet was reasonable. The tenant highlighted the fact that the tenancy agreement signed by the party was a standard agreement which did not say only one person could occupy the rental unit. The tenant said that the person in occupation of the unit with him had arrived from the U.K. on a visitor’s visa and did not have any right to work or study, and could therefore only remain in the country until October 12, 2018, the date on which her visitor’s visa would expire. The tenant’s agent who presented submissions on behalf of the tenant stated that he had “twenty years’ experience” as a builder and he argued that it was in fact faulty construction which had led to the increased presence of moisture

and mould in the rental unit. The tenant's agent explained that an additional person in a rental unit would not place added strain on the septic field and that several readily available remedies such as the presence of a dehumidifier or a humidistat would solve the majority of the condensation issues. Both parties agreed that the breakdown of the relationship between the parties had led to a disagreement on which appliances should be used, with the tenant's agent arguing that the restrictions placed on the tenant's use of a fan had led to an increased presence of moisture in the unit.

Analysis

The landlord issued a 1 Month Notice because it was alleged that the tenant had; permitted an unreasonable number of persons to occupy the rental unit, and the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit. During the hearing, counsel for the landlord sought to establish that the presence of this second person in the rental had led to an accelerated rate of damage in the rental unit, and the presence of two persons in the home had caused extraordinary damage to the unit. I will therefore examine these allegations together.

During the hearing, the tenant acknowledged that a person not recognized on the rental agreement between the parties was currently residing in the rental unit. The landlord argued that the presence of this person constituted an unreasonable number of persons in the rental unit. At the hearing it was explained by the landlord that the tenant along with this person occupied a one bedroom, 480 square foot unit. The landlord stated that this was contrary to her understanding of the agreement with the tenant. As part of her evidentiary package the landlord submitted a copy of the tenancy agreement, along with the original advertisement for the rental unit to which the tenant replied. This advertisement clearly stated the unit was "suitable for one person," with counsel submitting that the second person in the suite should no longer be viewed as a guest but rather an occupant.

Counsel argued that in addition to a violation of the tenancy agreement, the presence of this second person had led to an increase in mould and condensation in the rental unit. Numerous videos, pictures and a significant number of submissions were provided by the landlord and her counsel which sought to establish that these issues had only arisen following the presence of this second person in the rental unit.

The tenant disputed that 480 square feet was too small of an area for two persons to occupy, argued that the tenancy did not explicitly prohibit two persons from occupying the rental unit and stated that the presence and build-up of mould and moisture in the

rental unit was the result of construction issues versus the presence of two persons in the unit.

After having considered all submissions, the landlord's testimony and the evidentiary packages submitted by both parties, I find that the landlord has failed to establish that the tenant has permitted an unreasonable number of persons to occupy the rental unit. I note the tenancy agreement submitted to the hearing does not contain a clause or addendum that specifically states that any additional occupant other than the person listed on the tenancy agreement is prohibited, and I find that two people living in a one bedroom rental unit which is 480 square feet to be reasonable. It is not uncommon in several neighbourhoods around Vancouver, Victoria and other municipalities to find two persons occupying a space of this size. In addition, I find that while there may be an increase in wear and tear in the living area, and that this person may now be an occupant rather than a guest, no evidence was presented that the presence of this second person led to any health, safety, or unsanitary issues concerning the use of a septic system or that the tenancy agreement contains a term that another occupant may not be in the unit. For these reasons, I dismiss this portion of the landlord's notice.

The second portion of the landlord's one month notice concerned extraordinary damage to the unit. As described previously, conflicting reasons for an increased presence of mould, moisture and condensation were presented at the hearing. I find a determination related to the source of these moisture and mould issues is impossible without significant information from persons who specialize in that matter. Furthermore, I must consider whether the tenant had caused *extraordinary* damage to the rental unit. After having reviewed the photographs and videos submitted by both parties, I find it evident that a moisture issue in the unit has led to some damage but I do not consider this damage to be so *extraordinary* as to warrant the tenancy ending. As mentioned previously, it is very difficult to determine the source of this moisture issue, and little evidence was presented by the landlord that this moisture has caused any significant structural or health issues, or that this moisture may lead to long term, permanent damage. I find that the landlord has failed to establish that the tenant has caused extraordinary damage to the rental unit.

As the tenant was partially successful in his application, he may recover the \$100.00 filing fee from the landlords. In lieu of a monetary award, I allow the tenant to withhold \$100.00 from a future rent payment on **ONE** occasion.

Conclusion

The tenant was successful in his application to cancel the landlord's 1 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant's application directing the landlord to comply with the *Act* and setting conditions on the landlord's right to enter the rental unit is dismissed with leave to reapply.

As the tenant was partially successful in their application, he may recover the \$100.00 filing fee from the landlord and may withhold \$100.00 from a future rent payment on **ONE** occasion.

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 3 2018

Residential Tenancy Branch