



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On August 3, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants and Landlord both attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing package and evidence by registered mail on August 8, 2018 and the Landlord confirmed that she received this. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing and evidence.

The Landlord stated that she served her evidence to the Tenants by registered mail in early September and the Tenants advised that they received this evidence. As such, I am satisfied that the evidence has been satisfactorily served on the Tenants in accordance with Rule 3.15 of the Rules of Procedure, and it was considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

All parties agreed that the tenancy started on June 15, 2015 and that rent is currently \$1,900.00 per month, due on the first day of each month. A security deposit of \$950.00 was paid.

All parties agreed that the Notice was served to the Tenants by registered mail on July 23, 2018 and the Tenants confirmed that they received the Notice on July 27, 2018. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has: put the landlord's property at significant risk." As well, the "Tenant has not done required repairs of damage to the unit/site." The effective date of the Notice was August 31, 2018.

The Landlord advised that the Tenants made cosmetic changes to the rental unit for their own enjoyment, but these changes were not approved. She also stated that the Tenants completed unauthorized electrical wiring of the house that was confirmed by an electrician to be against the building code. Both parties disagreed on the level of communication during the tenancy; however, the Landlord advised that she would have dealt with repair issues had they been brought up to her. She stated that she inspected the property on May 16, 2018 and noticed some deficiencies that she brought to the Tenants' attention, and then advised that another follow-up inspection would be conducted on June 6, 2018. On this second inspection, she believed that there were still issues that were not addressed, so she served a letter to the Tenants dated June 29,

2018 requesting that they be rectified. On July 22, 2018, a second follow-up inspection was completed and some of the requested issues had been addressed by the Tenants.

She stated that the rental unit is on a septic system that was pumped out every three to four years. However, the septic system was pumped out three months after the Tenants moved in, pumped out again in May 2017, and pumped out a third time in June 2018. The company that pumped the septic system noted that there was a heavy use of sanitary wipes, candy wrappers, feminine products, glow sticks, and grease found in the tank after the tank pump outs in May 2017 and June 2018. After the May 2017 pump out, the Landlord verbally advised the Tenants what items should not be placed in the septic tank, and after the June 2018 pump out, the Landlord sent them a written letter regarding this on July 23, 2018. She stated that the continuous abuse of the septic system could result in a failure of the system.

The Tenants submitted that they would fix minor issues independently and would bring forth any major repairs with the Landlord. They stated that they had informal verbal agreements to change minor items around the rental unit. However, over the last two years, they had no communication with the Landlord, so they made more significant repairs and changes at their expense and treated the rental unit as if it was their own.

They advised that the Landlord visited the rental unit in May 2018 and they discussed the condition of the rental unit. In late June 2018, the Landlord returned with a letter outlining concerns that she wanted the Tenants to address. The Tenants advised that they complied with the Landlord's letter and rectified most of the issues. They also stated that they never flushed down inappropriate materials into the toilet and suspected that the materials found were from the previous tenants. They submitted that the septic tank was pumped out because of an incorrectly installed pipe that they had fixed. The Tenants believe that this is a deliberate attempt to end the tenancy.

Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) put the landlord's property at significant risk;*

While there are many issues in dispute, when reviewing the totality of the evidence before me, the undisputed evidence is that the septic tank had been pumped out three times during the tenancy. Furthermore, as submitted into evidence, it was documented by the company that pumped out the tank that materials were inappropriately disposed of, which caused the sewer line to plug in May 2017 and June 2018. While the Tenants denied flushing these materials down the drains despite verbal and written warnings, it does not make sense to me that these materials would have been from the tenants prior to this tenancy, as the Tenants speculate. As the tank was flushed in June 2015 after the Tenants moved in, it would be reasonable to conclude that these inappropriate materials would have been discovered then, had it been due to the previous tenants. Based on the findings of the two most recent septic tank pump outs, I find it more likely than not that the materials discovered to have caused the sewer lines to be plugged were as a result of the Tenants' actions. Moreover, it appears as if these actions caused the septic tank to have required more frequent service and consequently, put the Landlord's property at significant risk.

When reviewing the totality of the evidence, despite being advised to refrain from flushing harmful materials down the drains, I am satisfied that the Tenants' behaviour jeopardized the tenancy and that this provides a basis and justification for the Landlord ending this tenancy. As such, I dismiss the Tenants' Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession. Ultimately, the Order of Possession takes effect at **1:00 PM on October 31, 2018**, pursuant to Sections 52 and 55 of the *Act*.

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

Conclusion

I dismiss the Tenants' Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on October 31, 2018 after service of this Order** on the Tenants. 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.

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: October 2, 2018

Residential Tenancy Branch