



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, PSF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on July 26, 2018 wherein the Tenants sought the following relief:

- to cancel a 1 Month Notice to End Tenancy for Cause signed on July 19, 2018 (the "Notice") pursuant to section 47 of the *Residential Tenancy Act* (the "Act");
- more time to make an application to dispute a notice pursuant to section 66(1) of the *Act*; and,
- an Order pursuant to section 62(3) that the Landlords provide services or facilities as required by law.

The hearing was scheduled for teleconference at 9:30 a.m. on September 18, 2018. The line remained open while the phone system was monitored for fourteen minutes and the only participants who called into the hearing during this time were the Tenants.

The Landlords did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

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

As the Landlords failed to call into the hearing, service of the Tenants' Application package was considered. The Tenant, B.S., testified that he personally served their Application for Dispute Resolution and Notice of Hearing on the Landlord, Y.B., at approximately lunch time on July 27, 2018.

Branch records indicate the Landlord called the Residential Tenancy Branch on August 2, 2018 such that the Landlord acknowledged their awareness of the hearing date.

I therefore find the Landlords were served with notice of this hearing and I proceeded with the hearing in their absence.

Analysis and Conclusion

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution the Landlords were required to attend the hearing to provide evidence in support of the Notice.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Landlords failed to call into the hearing and provide any evidence in support of the Notice. I therefore find they have failed to meet the burden of proving the reasons for ending the tenancy. **Consequently, I grant the Tenants' request to cancel the Notice. The tenancy shall continue until ended in accordance with the Act.**

The Tenants also indicated they sought more time to apply to dispute the Notice. I accept B.S.'s testimony that although the Notice was purportedly signed on July 19, 2018, they were in fact served the Notice on July 18, 2018. Section 47(4) of the *Act*

provides that a tenant who receives a 1 Month Notice to End Tenancy for Cause has 10 days in which to apply to cancel the notice; as these Tenants applied on July 26, 2018, they applied within the time limits required by section 47 and therefore do not require more time pursuant to section 66(1) of the *Act*.

In terms of the Tenants' request for an Order pursuant to section 62(3) of the *Act* that the Landlords provide services or facilities as required by the *Act*, the Tenant B.S., confirmed that they in fact intended to make an application that the Landlords make repairs to the rental unit due to the presence of mould. The Tenants failed to submit any evidence in support of this claim nor did they give the Landlords notice of their intentions. The Tenants confirmed this was their first time making such an application to the Residential Tenancy Branch.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

The parties are reminded of the requirements in sections 32 of the *Act* as well as the requirements set out in the *Residential Tenancy Act Regulation – Schedule: Repairs* which read as follows:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

- 8** (1) Landlord's obligations:

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

The parties are also cautioned to consider *Residential Tenancy Branch Policy Guideline 1* as it provides guidance on the parties' responsibilities in terms of maintenance and repairs to the rental unit.

As the Tenants failed to give the Landlords notice of their request for a repair Order, and were not prepared to argue their claim for an Order that the Landlords provide services and facilities, I dismiss, with leave to reapply, the Tenants' request for an Order pursuant to section 62(3). Should either party make an application before the Branch, they are further reminded that hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 18, 2018

Residential Tenancy Branch