



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, OPB, OPC

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause as well as the end of a fixed term tenancy, monetary compensation from the Tenants for damage to the rental unit and recovery of the filing fee.

The hearing was scheduled by teleconference at 11:00 a.m. on September 20, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

A tenancy may only be ended in accordance with the *Residential Tenancy Act*. Section 44 of the *Act* sets out the circumstances when a tenancy ends and reads as follows:

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended;
 - (g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

On the Application the Landlord wrote that he wished to end the tenancy on the basis of a one month notice [pursuant to section 44(1)(iii)] which relates to a notice for cause(section 47)] and because he alleged it was a fixed term tenancy [pursuant to section 44(1)(b)].

Dealing first with the allegation the tenancy was a fixed term tenancy, neither party submitted a copy of any written tenancy agreement in evidence such that it is not possible to find that the tenancy may be ended in accordance with section 44(1)(b).

Similarly, a 1 Month Notice to End Tenancy for Cause issued pursuant to section 47 must be in the approved form pursuant to section 52 of the *Act* which reads as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the ***approved form***.

[Emphasis added in ***bold italics***]

The document purporting to end the tenancy, titled "Notice of Termination by Landlord" is not in the *approved form* which is #RTB – 33 and can be found at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb33.pdf>

Consequently, the document purporting to be a 1 Month Notice pursuant to section 47 of the *Act* is not valid.

For these reasons the Landlord's claim for an Order of Possession ending the tenancy is dismissed.

The Landlord also sought monetary compensation from the Tenants for damage to the rental unit as well as authority to retain the security deposit. As the tenancy has not ended, such claims are premature. **As such, I dismiss the Landlord's monetary claim with leave to reapply.**

The parties are reminded of section 37(2) of the *Act* which requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* also mandates the tenant's and landlord's obligations in respect of repairs to the rental unit and provides 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.

Conclusion

The Landlord's claim for an Order of Possession is dismissed.

The Landlord's claim for monetary compensation from the Tenants and authority to retain their security deposit is dismissed with leave to reapply.

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: September 20, 2018

Residential Tenancy Branch