



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDCLS FFL CNC FFT

Introduction

This hearing was scheduled to consider applications from both the tenant and landlords pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant seeks:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause pursuant to section 47; and
- recovery of the filing fee for this application from the landlords pursuant to section 72..

The landlord seeks:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- recovery of the filing fees for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord PS (the “landlord”) primarily spoke on behalf of both co-landlords.

As both parties were present service of documents was confirmed. The tenant confirmed that they were served with the landlord’s 1 Month Notice on July 22, 2018, and the landlord’s application and evidence on or about September 1, 2018. The landlords confirmed receipt of the tenant’s application materials on or about July 30, 2018. Based on the undisputed testimonies, I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Initially, I was scheduled to hear only the tenant's application today. The landlord's application seeking an order of possession enforcing the 1 Month Notice and seeking a monetary award was originally scheduled to be heard by me on October 22, 2018. The landlords' application seeking an order of possession and monetary award The tenant testified that they had received the landlord's application for dispute resolution and were prepared to proceed. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be considered for each application I ordered that the matters be brought together and heard at once.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an order of possession for cause?

Are the landlords entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee for this application?

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 both parties' claims and my findings around each are set out below.

The parties agreed on the following facts. This periodic tenancy began in June 1, 2018. The monthly rent is \$1,300.00 payable on the first of each month. A security deposit of \$650.00 was paid by the tenant at the start of the tenancy and is still held by the landlords.

The rental unit is the basement suite of a detached home with the landlords residing in the other portion of the home. The parties submitted into evidence the tenancy agreement and addendum to the agreement.

The landlord issued the 1 Month Notice indicating that the reason for the tenancy to end is that:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord gave evidence that the tenant has repeatedly parked their vehicle in the driveway of the rental building despite the addendum to the tenancy agreement prohibiting the tenant from doing so. The landlord testified that the tenant was issued warning letters advising them to cease blocking the driveway. A copy of a letter dated July 18, 2018 was submitted into written evidence.

The parties characterized the tenancy as stressful and antagonistic. The landlord gave evidence that there have been numerous hostile interactions with the tenant, that the tenant has failed to properly lock the rental unit or turn on the alarm system and that the tenant has called the police to attend at the property without cause to do so. The landlord said that they have young children and are concerned for their welfare and safety with the tenant residing in the building.

The tenant disputed the landlord's characterization and said that any disputes or conflicts are initiated by the landlord. The tenant gave evidence about the difficulties she had first moving into the suite, the condition of the rental unit and what she sees as the landlord's interference with her right to quiet enjoyment.

The landlord seeks a monetary award of \$463.45 for the additional usage of utilities. The landlord testified that though utilities are included in the monthly rent the utility bills have dramatically increased since the tenancy started. The landlord believes that the increase in consumption is due to the tenant keeping the lights on at all hours including when she is not home. The landlord seeks the amount of the increased utility usage.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlords must show that there has been a breach of a material term of the tenancy agreement or that the tenant or their guests have significantly interfered with or unreasonably disturbed the landlord, seriously jeopardized the health or safety of other occupants or put the property at significant risk.

I find that I am satisfied that the tenant's conduct has been such that there has been a significant, ongoing and unreasonably disturbance of the landlords. I accept the evidence that the tenant has parked in the driveway on multiple occasions despite being informed that they are not permitted to do so. I find that the tenant's failure to amend their behaviour and confront the landlords to be an unreasonable response. I accept the evidence that there have been several instances where the parties have been involved in aggressive confrontations. I further accept that the tenant has, on more than one occasion, left the alarm system unarmed, their keys left outside the building and the entrance unlocked. When a rental unit is in a building shared with other residents I find that such lack of diligent security to be a risk to the other occupants. I accept that the tenant has seriously jeopardized the health and safety of the other occupants of the building by failing to diligently secure their unit.

I find that I am satisfied on a balance of probabilities that the landlords have shown there is cause for this tenancy to end. Accordingly, I dismiss the tenant's application and issue an order of possession to the landlords. As the effective date of the 1 Month Notice has passed I issue an order of possession effective two days after service.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The landlord claims an amount for increased utility usage by the tenant. I find that there is insufficient evidence that there has been a violation by the tenant which would give rise to a monetary claim. I accept the undisputed evidence of the parties that the tenancy agreement provides that utilities are included in the monthly rent. There is no provision in the tenancy agreement allowing the landlords to retroactively charge an

additional amount for utilities if they feel the consumption was high. While it may be environmentally unsound and wasteful, the tenant leaving the lights on does not constitute a violation of the Act, regulations or tenancy agreement.

I accept the evidence of the parties that the landlords and tenant entered a tenancy agreement wherein the monthly rent included electricity. I therefore find that there is no obligation for the tenants to contribute to the utility bills. I dismiss this portion of the landlords' claim.

As the landlords' application was not wholly successful I decline to allow the landlords to recover the filing fee for their application.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The balance of the landlord's application is dismissed without 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