



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) and Tenant S.B. (the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and evidence which were sent by registered mail to them on July 24, 2018. In accordance with sections 88 and 89 of the Act, I find that the landlord was duly served with the Application and the tenants' evidence.

The tenant acknowledged receipt of the landlord's evidence which was sent by registered mail to them August 20, 2018. In accordance with section 88 of the Act, I find that the tenants were duly served with the landlord's evidence.

The tenant confirmed that they received the One Month Notice which was sent to them by registered mail on July 12, 2018. In accordance with section 88 of the Act, I find that the tenant was duly served with the One Month Notice.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

A tenancy agreement was provided by the tenant, which shows that this tenancy commenced on September 01, 2013, with a current monthly rent in the amount of \$1,649.00, due on the first day of each month. The landlord confirmed that they currently retain a security and pet damage deposit in the amount of \$1,423.00.

Section 17 (d) and (e) of the tenancy agreement states that, unless prior consent is given by the lessor, Residents shall not paint, carpet or decorate the Premises or Property or attach or affix any awnings, shades, flowerboxes, structures, aeralis, works, construction or things of any nature to, over, outside or on any windows, doors, balconies or other parts of the premises.

A copy of the signed July 12, 2018, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by August 31, 2018, the landlord cited the following reason for the issuance of the One Month Notice:

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

In the Details of Cause section of the One Month Notice the landlord indicates:

"Tenant has affixed grouting tiling to the kitchen walls in contravention of s. 17 of our tenancy agreement. Informal and formal requests were made with a deadline of June 27, 2018. No effort was observed to comply, we provided an extension to July 11, 2018. Inspection demonstrates no effort or intent to comply. After a review of the tenancy #### (the landlord) no longer supports this tenancy."

The landlord also provided into evidence:

- a copy of a written response from the landlord regarding the tenant's dispute of the One Month Notice in which the landlord provides a timeline of events that have occurred from May 11, 2018, to July 11, 2018;

- a copy of a 'Policy for Re-decoration, Non Standard Paint Colours' signed by Tenant P.O. which establishes the conditions to decorate the unit, only allowing painting the unit with three approved colours and only allowing latex-based paint;
- a copy of a 'Tenancy Agreement Checklist' signed by both tenants which indicates that the tenants know and understand what they can do to decorate the rental unit, what they can't do and what they need permission to do;
- a copy of a 'Summary Report' from the site manager of the rental unit indicating that in the event that remediation is required, the landlord would require access to the interior of the effected wall which is not accessible due to the tile installation in the rental unit which is a significant barrier to access by staff or trades;
- A copy of a letter dated May 29, 2018, from the landlord to the tenants indicating that the tenants have made unauthorized interior renovations. The letter formally requests the tenants "to remove and return to original condition all effected wall areas, noted to be in the kitchen or elsewhere, that you have installed or affixed tiling or other affixed items without permission". The letter gives the tenants until June 27, 2018, to remediate the situation and that "if the areas are not returned to original condition to the satisfaction of inspecting staff there will be further action taken in regards to this tenancy up to and including ending the tenancy for cause";
- A copy of a letter from the tenants to the landlord dated June 04, 2018, in which the tenants state that the renovations are of good quality, that section 17 of the tenancy agreement is not applicable to the renovations completed by the tenants and that the tenants believe the letter regarding the tiling is actually about past events that have occurred between the landlord and the tenants;
- A copy of an e-mail from Tenant S.B. to the landlord stating that the tenants felt picked on but that they talked to the site manager and now understand why the rules are in place. The tenant then requests permission to keep the tiling up and restoring to original condition at the end of the tenancy;
- A copy of a letter dated June 28, 2018, from the landlord to the tenants in which the landlord states that the tenants "have been given clear and reasonable instruction to remove and remediate all tile work and other unauthorized renovations and return the effected areas to the original condition no later than June 28, 2018. Inspection by (the landlord) staff have concluded that these renovations have not been done." The letter then goes on to give the tenant until July 11, 2018 by 1:00 p.m. to remove the tiling and return the rental unit to its original condition;
- A copy of an e-mail from Tenant S.B. sent on July 11, 2018, at 6:48 p.m. to the landlord indicating that they will remove the tiling but not in the timeframe that the

landlord has given. Tenant S.B. states that Tenant P.O. will be able to do it soon but is busy at the current time with multiple jobs and the e-mail does not actually give any timeframe for the work to be completed by the tenants; and

- A copy of a letter dated July 12, 2018, from the landlord to the tenants indicating that they are ending the tenancy due to the tenants' clear and wilful breach of the tenancy agreement and lack of intent to rectify the situation.

In addition to some of the items above, the tenant also submitted into evidence a copy of a video showing the tiling affixed throughout the kitchen.

The landlord testified that the tenant has breached a material term of their tenancy agreement by affixing tiles to the walls in the kitchen area. The landlord submitted that they are not able to access piping behind the wall as the tiling acts as a barrier. The landlord further submitted that in the event of an emergency, if the piping should fail, this lack of access to the piping due to the tiling affixed to the drywall could result in damage exceeding what would normally occur if there was only drywall.

The landlord stated that access to the piping through the drywall is why the landlord has very strict rules about decorating the rental units and why they have the tenants sign multiple documents to confirm their understanding about the rules. The landlord stated that they have given notices to the tenant to remedy the situation and that the tenant has not made any efforts to comply with the landlord's notices.

The tenant submitted that they had asked permission to decorate their rental unit for a long time and no permission was given. The tenant indicated that she was in disbelief that the landlord was trying to end their tenancy for the tiling on the wall. The tenant stated that the landlord is still able to access the piping through some higher areas in the kitchen that are not covered by the tiling. The tenant stated that they feel that the landlord is harassing them about the tiling and that the notices sent by the landlord to the tenant are not about the tiles but about other incidents that have occurred in the past between the landlord and the tenant.

The tenant states that they have been living in this unit for many years, always pay their rent on time and have been good tenants in every way. The tenant submitted that there should not be an issue with the tiling if the tenants return the walls to their original condition at the end of the tenancy as per the Residential Tenancy Policy Guidelines. The tenant confirmed that no action has been taken to remove the affixed tiling from the rental unit as of the time of the hearing.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so.

Section 47 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 the grounds for the One Month Notice. As the tenant disputed this notice on July 18, 2018, and since I have found that the One Month Notice was served to the tenant on July 12, 2018, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*. I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice for the tenant.

I have reviewed all documentary evidence. Based on the landlord's written evidence and affirmed testimony of all parties, as well as the balance of probabilities, I find that the tenant has breached a material term of the tenancy agreement and has not corrected it after written notice to do so.

I find that there are three documents signed by the tenants concerning the rules regarding the restrictions for decorating the rental units. I find that, in addition to having section 17 in the landlord's tenancy agreement to establish the rules for decorating the rental unit including the restrictions on affixing anything to the premises, the landlord had the tenant sign a document specifically concerning the decoration of the rental unit and then another document to confirm that the tenant understands what they can and can't do to decorate their rental unit.

I find that the landlord having the tenant sign two other documents regarding restrictions on decorating the rental unit in addition to the tenancy agreement proves that the landlord considers the restrictions on decorating the rental unit a material term of the tenancy agreement. I further find that the Summary Report from the site manager confirms that there is a specific reason for this material term being in place for restricting the decoration of the rental unit. I accept the site manager's written statement that the tiling on the kitchen walls does not allow access for repairs to the piping behind the walls. Based on the site manager's summary report, I accept the landlord's submission that the tiling could cause damage over and above what would normally occur in the event of an emergency by impeding access to the piping.

Residential Tenancy Policy Guideline # 8 states that to end a tenancy for breach of a material term the landlord must inform the other party in writing that:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

I find that, in the letter to the tenant dated May 29, 2018, the landlord has clearly notified the tenant that there is a problem with the affixed tile in the rental unit, which the landlord considers a material term, and that the landlord has given clear instructions to the tenant regarding the removal of the tile with a deadline of June 27, 2018, to correct the issue and which could result in the landlord ending the tenancy if the issue is not corrected. I find that the deadline of a month for the tenants to correct the tiling issue is reasonable.

I find that the tenant sent an e-mail stating that they talked to the site manager, after receiving written notice on May 29, 2018, to indicate that they understood why the restrictions on decorating were in place, but that the tenant still requested to have the tiling remain in the rental unit until the end of their tenancy to which the landlord did not respond. I find that when the tenants did not comply with the landlord's request to have the tiling removed, the landlord then gave another written notice to the tenants on June 28, 2018, to extend the deadline for another two weeks to July 11, 2018.

Based on the evidence and affirmed testimony, I find that the tenants did not comply with the landlord to make any efforts to remove the tiling by the initial deadline or the extended deadline. I further find that only after the extended deadline had passed did Tenant S.B. offer to take down the tiling; however I find that the tenant did not give a clear timeframe for the removal of the tiling and that as of the time of the hearing the tenant confirmed that no efforts have been made to remove the tiling.

For the above reasons I find that the tenants have breached a material term of the tenancy agreement and have not corrected it after multiple written notices to do so.

Therefore, I find that the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the tenant's Application to set aside the One Month Notice is dismissed, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the One Month Notice complies with section 52 of the *Act*. The landlord testified that the tenant has paid the monthly rent for September 2018 which the landlord has accepted for use and occupancy, and for this reason, I grant an Order of Possession to the landlord effective as of September 30, 2018.

Regarding the tenants' Application to have the landlord comply with the *Act*, I find that the tenant has not provided any evidence that the landlord has not complied with the *Act* regarding any notices given to the tenants. I further find that, as this tenancy is ending the tenants' request to have the landlord comply with the *Act* is no longer applicable and it is dismissed, without leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee from the landlord, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord **effective on September 30, 2018, after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises 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: September 10, 2018

Residential Tenancy Branch