



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RI, LRE, OLC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

It was clarified with both parties that the tenants seek:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant's request regarding an order for the landlord to comply were related to the tenant's request to dispute a rent increase and the tenant's request to suspend or set conditions on the landlord's right to enter the rental unit was premature in anticipating the landlord obtaining an order of possession. As such, the hearing shall proceed on the above noted 3 items clarified.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenants entitled to an order to determine a disputed additional rent increase?

Are the tenants entitled to recovery of the filing fee?

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 the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2014 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 5, 2014. The rent was \$1,000.00 payable on the 1st day of each month. No security or pet damage deposits were requested.

On September 12, 2018, the landlord served the tenant with the 1 Month Notice dated September 11, 2018 in person. The 1 Month Notice sets out an effective end of tenancy date of October 15, 2018 and that it was being given as:

- the tenant is repeatedly late paying rent.

The details of cause listed on the notice state:

Repeatedly late/short paying rent despite MANY promises to correct.
Property is being re-purposed- family moving in.

During the hearing it was clarified with both parties that a "One Month Notice" is as stated and not a "30 Day Notice" as referred to the by landlord. One Months' clear notice must be given to the tenant. As such, both parties confirmed their understanding the correction of the effective end of tenancy date does not invalidate the notice. As such, the effective end of tenancy date shall be corrected to October 31, 2018.

The landlord has provided affirmed testimony that the tenant was late paying rent on:

April 2018, 3 separate payments of \$700.00, \$200.00 and \$300.00

May 2018, rent payment of \$1,150.00

June 2018, rent payment of \$1,100.00

July 2018, rent payment of \$1,140.00

The tenants confirmed the late rent payments of rent as claimed by the landlord. The tenants cited multiple personal issues that “became impossible” for them to pay the rent on time.

The tenants also seek a determination of rent increases imposed by the landlord. Both parties agreed that in August 2012 the monthly rent was \$800.00 per month. Both parties agreed that the landlord requested and the tenants accepted a rent increase of \$200.00 in 2015 and again a rent increase of \$200.00 in 2017. The tenants argued that the allowed rent increase should have been \$40.00 (4%). The landlord confirmed the rent increases as claimed by the tenants.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenants with the one month notice to end tenancy dated September 11, 2018 in person on September 12, 2018. The landlord claimed that the tenants have been repeatedly late paying the rent for the months: April 2018, May 2018, June 2018 and July 2018. The tenants confirmed the landlord’s claims stating that personal issues have prevented the tenants from paying rent on time. I find that the landlord has complied with section 49 of the Act and established the reason for cause as listed, “Repeatedly late payment of rent”. As such, the tenants request to cancel the one month notice dated September 11, 2018 is dismissed.

Pursuant to section 55 of the Act, having found that the one month notice is valid, I grant the landlord an order of possession to end the tenancy effective 2 days after the tenants being served.

On the tenants request for a determination regarding the landlord’s rent increases, I find that the increases took place in 2015 and again in 2017. The tenants’ position is that

they did not like the increase requests made by the landlord, but accepted them and paid them at the time of the requests. I asked the tenants why they did not make an application for dispute resolution to address the rent increase issues at the time of request(s), and the tenants responded that “they did not have a choice”. The tenants confirmed that until the landlord had served them with the notice to end tenancy, they were having “issues” with paying the rent as they are on a limited income. The tenants stated that had they not have this issue, the tenancy would have continued.

The legal principle of laches is based on the concept that equity aids the vigilant and not those who slumber on their rights. In this case, I find that the tenants ought to have diligently asserted their right or claim by making an application for dispute resolution during the tenancy to address those issues at the time they were brought forward. In failing to make an application at or near to the time the issues arose, the tenants did not allow the landlord to respond effectively to the tenants’ claims. On this basis, I dismiss the tenants’ application regarding rent increases.

Conclusion

The tenants’ application is dismissed.

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: November 05, 2018

Residential Tenancy Branch