



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, MNDCT, RP

Introduction

On October 11, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking to dispute a rent increase pursuant to Section 41 of the *Act*, seeking a repair order pursuant to Section 32 of the *Act*, and seeking monetary compensation pursuant to Section 67 of the *Act*.

The Tenants attended the hearing and the Landlord attended the hearing as well with C.C. All parties provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package by registered mail and the Landlord confirmed that she received this package on October 22, 2018. However, she stated that she did not receive form RTB-114 as per Rule 3.1 of the Rules of Procedure as it appeared as if the Tenants had served their Dispute Resolution package instead. As the Landlord had attended the hearing but could not explain how not receiving this would be prejudicial to her and would require an adjournment, it was determined that the Landlord was served in accordance with Sections 89 and 90 of the *Act*. As such, I am satisfied that the hearing could proceed accordingly.

The Tenants advised that they served the Landlord their evidence by registered mail and the Landlord confirmed that she had received it. She stated that the evidence was not legible; however, she advised that she was prepared to respond to the evidence. As such, I have accepted and considered the Tenants’ evidence when rendering this decision.

The Landlord advised that she posted her evidence to the Tenants’ door on November 12, 2018 and the Tenants confirmed that they received this evidence that day.

As this evidence was served in compliance with the timing requirements of Rule 3.15 of the Rules of Procedure, I have accepted and considered this evidence when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's One Month Notice to End Tenancy for Cause, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that the tenancy started on January 1, 2018. Rent was currently established at \$1,550.00 per month, due on the first of each month. A security deposit of \$775.00 and a pet damage deposit of \$775.00 were paid.

Both parties agreed that the Notice was served by hand on October 1, 2018. The reasons the Landlord served the Notice are because the "Tenant has allowed an unreasonable number of occupants in the unit/site", the "Tenant has not done required repairs of damage to the unit/site", and a "Breach of a material term of the tenancy

agreement that was not corrected within a reasonable time after written notice to do so.” The Notice indicated that the effective end date of the Notice was October 31, 2018.

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. In addition, the focus of the evidence will be on the reason that the “Tenant has allowed an unreasonable number of occupants in the unit/site”.

The Landlord submitted a signed tenancy agreement that outlined the names of the six occupants permitted to reside in the rental unit, in addition to the two Tenants. She advised that she went to the rental unit on September 15, 2018 to inspect the premises and conduct repairs and she discovered that there were three additional occupants living in the rental unit. She stated that the Tenants advised her that they were fostering three additional occupants that were not listed on the tenancy agreement and had been doing so for months. As this was contrary to the tenancy agreement and as the sleeping arrangements for these occupants were unsuitable due to the rental unit already being at capacity at the start of the tenancy, she stated that she sent a warning letter via email about the extra occupants.

The Tenants advised that there was only one extra occupant in the rental unit and that they had constructed an extra room to accommodate this. However, there was some dispute over the authority to construct this extra room and that it was eventually taken down. The Tenants did not speak to the extra occupants that the Landlord referenced; however, they confirmed that the one extra occupant was still living in the rental unit.

Analysis

With respect to the Notice served to the Tenants, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that this Notice meets the requirements of Section 52.

With respect to the validity of the reasons indicated on the Notice, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. When reviewing the totality of the evidence before me, I find that there is a signed tenancy agreement that outlines the approved occupants permitted in the rental unit. As the undisputed evidence before me is that there is at least one other occupant living in the rental unit that was not listed on the original tenancy agreement, and that it was deemed necessary by the Tenants to construct an additional room in an attempt to accommodate the extra occupant(s) appropriately, I am satisfied that this reinforces the

notion that the rental unit was not equipped to house the number of occupants currently residing in the rental unit. As such, I am satisfied on a balance of probabilities that there was more likely than not an unreasonable number of occupants living in the rental unit, contrary to the tenancy agreement, and that the Landlord has substantiated the reason for service of the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession that takes effect **two days after service of this Order** on the Tenants.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord **two days after service of this Order** on the Tenants. Should the Tenants 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: December 4, 2018

Residential Tenancy Branch