



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's 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;
- authorization to recover his 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 that the tenants served the landlords with the notice of hearing package and the submitted documentary evidence. Both parties also confirmed that the landlords served the tenants with the submitted documentary evidence provided by the landlords. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to a monetary order for 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.

On November 18, 2018, the landlords served the tenants with the 1 Month Notice dated November 18, 2018 in person. The 1 Month Notice sets out an effective end of tenancy date of January 1, 2019 and that it was being given as:

- the tenant or 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;
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The details of cause listed on the notice state:

On October 28, 2018 the tenants, Amanda J...and Ryan J..., and Amanda's son Jared..., were in contravention of the City of Nanaimo Firearms Regulation Bylaw 1996 No. 5121 when they were observed shooting a pellet gun in the backyard of..., Nanaimo. Pellets are embedded in the back fence, and behind the fence is the Parkway Trail and the Island Highway.

Both parties confirmed that the landlords served the tenants with the 1 month notice dated November 18, 2018 as stated above.

The landlords claim that the tenants fired a pellet gun in the backyard which a bylaw infraction and a dangerous act. The landlords stated that the tenants were given a notice to end tenancy on November 18, 2018 as a result. The landlords stated that there was "very little damage", pellet holes in the fence.

The tenants dispute the landlords' notice, but confirm that a pellet gun was fired in the backyard at a target one-time. The tenants stated that upon discovering that there was an issue using the pellet guns no further use of the pellet gun has occurred. The tenants provided affirmed testimony that they did not realize that using the pellet was an issue. The tenants stated that at no time has the landlords issued any warnings prior to issuing the notice to end tenancy.

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 have confirmed that the landlords served the tenants with the notice to end tenancy dated November 18, 2018 as claimed. Both parties have confirmed that the tenants used a pellet gun to shoot at a target in the backyard. Both parties have confirmed that the landlords did not provide any warnings prior to issuing the notice to end tenancy. The landlords provided undisputed testimony that firing a pellet gun in the backyard is contrary to the local bylaws.

It is clear based upon the undisputed evidence of both parties that the tenants used a pellet gun contrary to a local bylaw which does constitute an illegal activity. However, the illegal activity must have some effect on the tenancy. The tenants provided undisputed evidence that they did not realize that the use of a pellet gun was prohibited nor upon being notified have the tenants used the pellet gun further. The landlords provide undisputed evidence that no warnings were given prior to the issuance of the notice to end tenancy nor are they aware of any further usage of the pellet gun. In this case, I find that although there has been a contravention of the local bylaw, the usage of the pellet gun is not significant enough to impact the tenancy. As such, the tenants' application is granted. The one month notice dated November 18, 2018 is set aside and cancelled.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants' application is granted. The tenancy shall continue. The tenants are entitled to recovery of the \$100 filing fee. As the tenancy continues, I authorize the tenants to withhold \$100.00, one-time from the next monthly rent due upon receipt of this decision.

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: January 14, 2019

Residential Tenancy Branch