



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES
LIMITED and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 4, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated January 22, 2019 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Tenant and the Landlord's agents, Z.K. and K.H., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified the Application package was served on the Landlord by providing a copy to an agent of the Landlord on February 17, 2019. Z.K. acknowledged receipt on behalf of the Landlord. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

The Tenant also submitted further documentary evidence to the Residential Tenancy Branch, which was received on March 18, 2019, the day before the hearing. The Tenant testified the evidence was served on an agent of the Landlord and a copy was emailed to Z.K. on the same date. Z.K. submitted that the Landlord's agents have not had a sufficient opportunity to review and respond to the documentary evidence. The Tenant advised that health concerns limited his ability to gather and provide evidence at an earlier date.

Rule of Procedure 3.14 confirms that an applicant's documentary evidence must be received by the respondent not less than 14 days before the hearing. In this case, I find it is more likely than not that the Tenant had sufficient time and opportunity to gather evidence and provide it to the Landlord in accordance with Rule of Procedure 3.14. I do not accept that the Tenant's illness prevented him from doing so as the Tenant testified during the hearing that he works on a full-time basis. Accordingly, the parties were advised that the only documents in the Tenant's subsequent evidence package that would be considered are those that have been in the possession of the Landlord before dispute resolution proceedings were initiated. Neither party objected to this determination.

The Landlord submitted documentary evidence in response to the Application. According to Z.K., she served them on the Tenant in person. The Tenant acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Landlord's documentary evidence was sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on August 1, 2013. Rent in the amount of \$1,683.00 per month is currently due on the first day of each month. The Tenant paid a security deposit of \$725.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice. The Tenant confirmed receipt of the One Month Notice on January 23, 2019. The One Month Notice was issued on the following bases: the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; the Tenant or a person

permitted on the property by the Tenant has engaged in illegal activity which has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Specifically, Z.K. testified that the Tenant failed to report plumbing leaks in the rental unit. One of the leaks was located in the bathroom ceiling and had to be repaired at some cost to the Landlord. Photographs of the ceiling before and during repair were submitted in support. The other leak was located in the kitchen but was not elaborated upon by Z.K. or K.H.

In addition, Z.K. testified that the rental unit is cluttered by computers and related equipment, and that the heat they produce is a hazard to the rental property. Z.K. testified the issue first arose in April 2018. During a routine inspection of the Tenant's rental unit, agents of the Landlord observed a cluttered, hot space. K.Z. testified to her belief that the heat was produced by the computers that were being used for commercial purposes. Z.K. submitted this activity was illegal because it contradicted the terms of the tenancy agreement. The Tenant was issued a warning letter and it appears the problem was addressed to the satisfaction of the Landlord. A copy of the letter addressing storage of items in the rental unit was submitted into evidence.

However, Z.K. testified that during a subsequent inspection in January 2019, the rental unit was found to be in a condition similar to that observed in April 2018. According to Z.K., the rental unit was a mess and computer equipment was strewn throughout.

In reply, the Tenant acknowledged that he builds computers and participates in crypto-mining as a hobby, but that it is not a commercial enterprise. The Tenant testified he has a full-time job. The Tenant also testified that computer equipment that was previously a concern has been sold and that the rental unit is no longer cluttered.

With respect to the Landlord's allegation that the Tenant's computers are a fire hazard, the Tenant denied the heat was produced by his computers. He testified that the computers are water-cooled and do not represent a risk. According to the Tenant, the rental unit has been cleaned of extraneous computer equipment.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the One Month Notice was issued on the bases identified above.

After careful consideration of the evidence and submissions of both parties, I find there is insufficient evidence before me to find that the leaks in the bathroom ceiling and kitchen represented a significant interference with or unreasonable disruption of another occupant or the Landlord. While I accept the Landlord likely incurred some loss to repair the damage, I find there is insufficient evidence to confirm the Tenant's reporting (or lack thereof) impacted the Landlord's requirement to repair it.

In addition, I am not satisfied there is sufficient evidence before me to conclude the Tenant's alleged breaches of terms of the tenancy agreement amounted to illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant. The Landlord's agents did not refer me to evidence that the alleged breaches affected another occupant in the rental property. I also find I am not satisfied that a breach of a term of a tenancy agreement constitutes illegal activity as contemplated under section 47 of the *Act*.

Policy Guideline #8 confirms that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. In this case, the alleged breaches related to property stored in the rental unit and use of the rental unit for commercial purposes. Applying Policy Guideline #8, I find these provisions are not material terms in that even a trivial breach would give the Landlord the right to end the tenancy.

In light of my findings above, I find that the Tenant's Application is successful. The One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment at the Tenant's discretion.

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

I order that the Tenant is entitled to deduct \$100.00 from a future rent payment at the Tenant's discretion in recovery of the filing fee.

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: March 20, 2019

Residential Tenancy Branch