



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M OLC MNDC CNC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 28, 2019, and amended on March 29, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit, dated January 30, 2019 (the "Four Month Notice");
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement;
- a monetary order for money owed or compensation for damage or loss;
- an order cancelling a One Month Notice to End Tenancy for Cause, dated March 14, 2019 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Tenants were both represented at the hearing by C.B. The Landlords attended the hearing. C.B. and the Landlords provided affirmed testimony.

On behalf of the Tenants, C.B. testified the Landlords were served with the Application package by ExpressPost because the Landlords live out of the country. E.T. acknowledged receipt on behalf of the Landlords. In addition, the Landlords testified that 2 documentary evidence packages were served on the Tenants by courier and in person. C.B. acknowledged receipt on behalf of the Tenants.

No issues were raised with respect to service and receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure and to which I was referred; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' request for an order cancelling the Four Month Notice and the One Month Notice, and to recover the filing fee. The Tenants are granted leave to reapply for the remainder of the relief sought as appropriate.

Issues

1. Are the Tenants entitled to an order cancelling the Four Month Notice?
2. Are the Tenants entitled to an order cancelling the One Month Notice?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on July 1, 2017. Rent in the amount of \$2,500.00 per month is due on the first day of each month. The Tenants paid security and pet damage deposits totalling \$2,500.00, which the Landlords hold.

As a brief background, the Landlords testified the Tenants have been given "multiple warnings", including two written warnings, regarding the late payment of rent. C.B. did not dispute this testimony. E.T. stated during the hearing that he was aware the repeated late payments gave the Landlords a right to end the tenancy for cause. However, E.T. testified the Landlords wanted to provide the Tenants with sufficient time to find alternate accommodation. Accordingly, the Landlords first issued the Four Month Notice on the basis they wish to convert the residence to a non-residential commercial use. During the hearing, C.B. acknowledged receipt of the Four Month Notice on January 31, 2019.

In support of the Four Month Notice, E.T. testified that the property consists of roughly 20 acres located on the Agricultural Land Reserve (the "ALR"). The Landlords wish to convert the property to a commercial farming use and sell produce in farmers markets. According to E.T., agriculture is the only commercial use permitted in the ALR. An "agricultural tenant" is expected to move onto the rental property on June 1, 2019, at which time farming operations will begin. The plan is to operate a bed and breakfast on the property although approvals are not expected until mid-July 2019. The Four Month Notice indicates that no permits or approvals are required by law.

In reply, the C.B. testified that the Landlords first told him they were going to use the property for a vacation rental. Further, C.B. testified that he recently saw the property advertised on AirBnB. In reply, K.T. acknowledged the advertisement was there. However, both Landlords indicated that it appears it was posted by the agricultural tenant and that they do not intend to list the property as a vacation rental. K.T. stated they need to "deal with" the agricultural tenant regarding the AirBnB listing.

The Landlords also issued the One Month Notice. C.B. acknowledged receipt of the One Month Notice on March 19, 2019. The Landlords testified the Four Month Notice was issued because the Landlords recognized the Tenants have a family and wanted to give them sufficient time to find alternate accommodation. However, when the Tenants disputed the Four Month Notice and claimed \$30,000.00 as compensation, the Landlords decided to issue the One Month Notice. According to the Landlords, the Tenants were given "multiple warnings" during the tenancy, including 2 written warnings, about repeated late payments of rent.

According to E.T., rent was paid as follows:

Rent due date	Rent paid
January 1, 2018	January 5
March 1, 2018	March 24
May 1, 2018	May 2
June 1, 2018	June 2
July 1, 2018	July 7
August 1, 2018	August 2
September 1, 2018	September 2
October 1, 2018	October 8
November 1, 2018	November 2
December 1, 2018	December 2
February 1, 2019	February 2
March 1, 2019	March 2
April 1, 2019	April 15

C.B. did not dispute the testimony of E.T. relating to the payment of rent.

Analysis

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

With respect to the Tenants' request for an order cancelling the Four Month Notice, section 49(6)(f) of the *Act* permits a landlord to end a tenancy if the landlord has all necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use. In this case, I find there is insufficient evidence before me to uphold the Four Month Notice. The evidence was inconsistent with respect to the uses to which the property would be put. Although E.T. testified the property would be put to a commercial agricultural use, K.T. acknowledged it appeared an agricultural tenant who will be occupying the rental property on June 1, 2019, has placed a listing on AirBnB. She acknowledged it is an issue the Landlords have to "deal with". In addition, although the parties were asked to refer me to the evidence upon which they intended to rely, I was not referred to sufficient documentary evidence to confirm the extent of the Landlords' plans, or that permits and approvals to convert the property to agricultural use are not required. Therefore, I find the Four Month Notice is cancelled.

With respect to the Tenants' request for an order cancelling the One Month Notice, section 47(1)(b) of the Act permits a landlord to take steps to end a tenancy when a tenant repeatedly pays rent late. Policy Guideline #38 provides assistance when determining whether or not a tenant has been repeatedly late paying rent. It states:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

[Reproduced as written.]

In this case, I find the Tenants have been repeatedly late paying rent. The undisputed testimony of E.T. confirms the Tenants have paid rent late for 13 of the last 16 months. The Landlords' evidence with respect to repeated late payments was not disputed by C.B. Further, I find that the Landlords' decision to issue the Four Month Notice followed by the One Month Notice was an attempt to give the Tenants more time, and does not derogate from the Landlords' ability to take steps to end the tenancy on more than one ground. Therefore, I find the Tenants' Application to cancel the One Month Notice is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord. Having reviewed the One Month Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlords are entitled to an order of possession, which will be effective April 30, 2019, at 1:00 p.m.

Conclusion

The Tenants' Application to cancel the One Month Notice is dismissed. Pursuant to section 55 of the *Act*, the Landlords are granted an order of possession, which will be effective April 30, 2019, at 1:00 p.m. The order of possession may be filed in 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: April 15, 2019

Residential Tenancy Branch