



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated March 29, 2019 and setting the end of tenancy for April 30, 2019.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on March 29, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on April 12, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated March 31, 2019?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would begin on April 1, 2018 and continue on a month to month basis. The tenancy agreement provided that the tenant(s) would pay rent of \$550 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$275 at the start of the tenancy.

The landlord testified as follows:

- The rental property is being used as a rooming house with 8 different tenancies. There is an upstairs portion and a downstairs portion each containing 4 rooms.
- On February 20, 2019 the City of Vancouver conducted an inspection of the rental property and confirmed that the building is being occupied as a rooming house with eight

bedrooms all with keyed locks and three dwelling units in contravention of Zoning and Development By-law No. 3575.

- On February 26, 2019 the landlord received a document titled Legal Notice from the City of Vancouver that states that the landlord is ordered to:
 1. IMMEDIATELY
 - Remove the keyed locks on all bedroom doors; and
 - Cease use of this building as a rooming house.
 2. WITHIN 60 DAYS OF THE DATE OF THIS ORDER:
 - Obtain the required permits for the unapproved alterations carried out without permit or approval; or
 - Obtain the required permits to remove all works carried out without permit (prior to the removal of the work) and restore the building to the last approved condition on record.

Please note, the above-noted violations will need to be addressed to ensure a safe living environment for all occupants, but it may not be necessary to evict any current occupants while you complete the required work and bring the property into compliance with City by-laws.

- The letter further states that the failure to comply with this order will result in the matter being referred to the City Prosecutor with a request to approve charges against you under the applicable bylaws.

The tenant gave the following testimony:

- The Notice indicates that “it may not be necessary to evict any current occupants while you complete the required work and bring the property into compliance with City by-laws.”
- He lives in the upper portion of the rental property. The work required to be done in in the lower portion.
- He is willing to have the locks removed from his room.
- The Notice to End Tenancy and the landlord failed to inform him in what way the rental property fails to comply with the bylaws as he is now willing to have the locks removed from his room.
- There has been another arbitration hearing dealing with the identical facts in which the tenant was successful. The tenant provided me with the file number of that hearing.

Grounds for Termination:

The grounds set out in Notice to End Tenancy provide the “Rental unit/site must be vacated to comply with a government order.”

Analysis:

After carefully considering all of the evidence I determined that landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- The Legal Notice given by the City of Vancouver is ambiguous. It requires the landlord to immediately remove the keyed locks on all bedroom doors; and cease to use the building as a rooming house. The second part requires the landlord to obtain required permits for the unapproved alterations and to obtain the required permits to remove all works and restore the building to its last approved condition on record. It then states it may not be necessary to evict any current occupants.
- The tenant has offered to have the locks to his rental unit removed.
- The landlord failed to provide copies of the appropriate City of Vancouver bylaws which would define a rooming house and failed to prove that the room in which the Tenant is residing with the locks removed are in contravention of the bylaws.
- Given these problems with landlords position I am unable to conclude that the letter from the City of Vancouver dated February 26, 2019 amounts to an order that the rental unit must be vacated to comply with a government order.

I note that the arbitrator in the previous hearing came to the same conclusion. I have included the relevant portions of that decision below.

“I find that the landlord did not issue the 1 Month Notice for a valid reason. I find that the City notice, dated February 26, 2019, provided by the landlord, specifically states at page 2 that “it may not be necessary to evict any current occupants while you complete the required work and bring the property into compliance with City by-laws.” The City notice required immediately that all keyed bedroom locks be removed and to cease using the building as a rooming house cease. The tenant is agreeable to removing the keyed lock from his door, which is required by the City notice, immediately. If the other occupants are not willing to do so, this is irrelevant to the tenant and is not within his control.

I further find that the landlord failed to provide the definition of a rooming house as per the City requirements, or to show what had to be done in order to ensure that the house cease operating as a rooming house. I find that the landlord failed to show that the tenant has to be evicted, rather than residing in the house, without keyed locks to his room door.

The City notice required that permits be obtained for unapproved alterations or to remove work carried out without permits, within 60 days of the notice. I accept the tenant's submission that the permits for the alterations only pertain to the lower level of the house, not the upper portion where the tenant resides. The landlord did not dispute this fact during the hearing and did not make any submissions about what alterations were made in the house and what permits were required.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated March 29, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I order that the one month Notice to End Tenancy dated March 31, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

This decision is final and binding on the parties.

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: May 27, 2019

Residential Tenancy Branch