



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 1 Month Notice on April 30, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

The tenant submitted a monetary worksheet for losses or money owed for this tenancy. The tenant also requested that the landlord provide her with kitchen facilities for this tenancy. As the tenant did not file an application, nor did she file any amendments to her original application, for a monetary order pursuant to section 67 of the *Act*, nor did she file any applications under section 65 of the *Act* for the landlord to provide facilities

or services as agreed upon, these matters were not considered as part of this application. The hearing proceeded in order to deal with the tenant's original application as set out above.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlords to make emergency repairs to the rental unit?

Background and Evidence

This month-to-month tenancy began on December 1, 2018. Rent is currently set at \$750.00 per month, payable on the first of every month. The tenant continues to reside at the rental address. The tenant paid a \$500.00 security deposit, which the landlords still hold.

The landlords issued the 1 Month Notice on the following grounds:

1. Rental unit/site must be vacated to comply with a government order.

The landlords testified in this hearing that they had received letters from the bylaw office informing them that they have determined that the rental unit is an unregistered secondary suite, and as a result the landlords were issued a penalty. The landlords were also informed that fees and charges would be levied for this secondary suite. The landlords included in their evidentiary materials copies of the letters dated April 18, 2019, as well as the invoice for the penalty. The letter states that *"if at some point in the future the multiple secondary suite is removed from the Property, you may call the City's Secondary Suite Clerk at...to arrange for an inspection of the Property. Once the City inspection confirms that there is no multiple secondary suite, the City will stop the multiple suite service fee effective the end of the year."*

The landlords testified that they cannot afford to pay the penalties and fees, and therefore need to end the tenancy. Both parties confirmed in the hearing that the tenant has been paying a reduced monthly rent of \$750.00 as the rental unit does not contain kitchen facilities. The tenant paid a security deposit of \$500.00, as the original monthly rent was to be set at \$1,000.00.

The tenant, in her application, also requested emergency repairs. The tenant testified that she had made multiple requests for repairs to the leaking sink. The landlords provided in their evidence a note from a plumbing company that they had contacted, stating that it was not possible to perform the requested repairs as there is no room for drainage.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on May 3, 2019, 3 days after receiving the 1 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlords has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

- 47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...*
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;*

In this case, the landlords provided a letter from the city that the rental unit was deemed an unregistered, secondary suite, and accordingly, the landlord was levied a penalty. Additionally, the landlord was informed that they would be billed fees and charges for this suite, unless they make arrangements for an inspection once the suite is removed. The landlord opted for the second option as they cannot afford these penalties and charges.

Although I sympathize with the landlords' concerns that the continuation of this tenancy would cause a financial hardship for them, section 47 of the *Act* does not allow this as a reason for ending a tenancy. I have reviewed the letter and documentary evidence, and

I find that the landlords are not in possession of an order requiring the tenant to vacate the rental unit.

For the reasons outlined above, I find that the landlords have not satisfied me that this tenancy must end on the grounds provided on the 1 Month Notice. Accordingly, I allow the tenant's application to cancel the 1 Month Notice dated April 30, 2019, and this tenancy is to continue until ended in accordance with the *Act*.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system...
 - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I am not satisfied that the tenant had provided sufficient evidence to support that she had fulfilled the necessary steps as set out in section 33 of the *Act* for emergency repairs, including giving the time for the landlords to make necessary repairs. I am satisfied that the landlords had responded by contacting a plumber, who was unable to carry out the repairs. In light of the tenant's sworn testimony that this is still an outstanding matter that needs to be addressed, I remind the landlords of their duty and obligation to perform repairs as required by section 32 of the *Act* as stated below:

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlords to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated April 30, 2019, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant's application for emergency repairs is dismissed with leave to reapply. The landlords are reminded of their obligation to repair and maintain property as set out in section 32 of the *Act*.

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: June 20, 2019

Residential Tenancy Branch