



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FFT MNDCT

Introduction

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

- An order to cancel a One Month Notice to End Tenancy for Cause pursuant to section 47;
- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67;

Both of the tenants attended the hearing, represented by the tenant, JH ("tenant"). The landlord AM attended the hearing. The landlord acknowledged receipt of the tenant's application for dispute resolution. The tenants acknowledge being served with the landlord's evidence.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Preliminary Issue - evidence

The landlord acknowledges the tenants provided him with a compact flash memory device that was either blank or unreadable. The landlord testified his local library and print shop but both were unable to read it.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure describes how parties are required to confirm the opposing party is able to access digital evidence.

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

(emphasis added)

When the landlord testified the memory device was unreadable, the tenant testified that he was able to read it by checking it multiple times on different devices. The tenant did not indicate he had contacted the landlord to determine whether the landlord was capable of accessing the evidence. I am not satisfied the tenant has complied with Rule 3.10.5 and will not be considering the documentary evidence provided on the memory device.

Preliminary Issue

Rules 6.1, 6.2 and 2.3 pertain to the hearing of a dispute resolution proceeding, reproduced below.

6.1 Arbitrator's role

The arbitrator will conduct the dispute resolution process in accordance with the Act, the Rules of Procedure and principles of fairness.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that

have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I determined the tenant's application to cancel the landlord's 1 month notice for cause was not substantially related to the remainder of his application. I dismissed the remainder of the tenant's application with leave to reapply.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause issued on May 18, 2019 be cancelled?

Should the filing fee be recovered from the landlord?

Background and Evidence

The parties agree on the following facts. This tenancy involves a house located on the landlord's property. The landlord occupies a trailer on the same property. The fixed one year tenancy began on May 16, 2017 becoming month to month at the end of the fixed term. Rent in the amount of \$1,600.00 was to be paid on the 15th day of the month. A security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$800.00 was collected which the landlord continues to hold. A condition inspection report was done at the commencement of the tenancy.

The landlord provided a copy of the tenancy agreement, including addendums, in his evidence. In the addendum called 'Pet Agreement' is clause #5 which reads:

All dogs and cats must wear identification tags that indicate the pet's name, and contact phone number. All pets must be properly licensed in accordance with local bylaws. Evidence of the same shall be provided to the landlord.

Clause #1 of the 'Pet Agreement' acknowledges the tenants own two dogs, a 100 lbs Husky/Lab/Shephard and a 15 lbs shi/poo.

The landlord gave the following testimony. Every time he goes to the tenants rental unit, he is confronted by the tenants dogs. He is not comfortable in entering the tenant's rental unit for fear of the dogs. The landlord also testified the tenants are in breach of a material term of the tenancy for not having the dogs licensed.

On May 15th, he spoke to the tenant JH and verbally advised him he wished to do an inspection the following day at noon. No written notice to enter was provided. On May 16th, the landlord was denied entry by the tenant SD.

The same afternoon of May 16th, the landlord provided the tenants with a written notice to enter the rental unit for inspection. The original handwritten notice dated May 16th was not available for the landlord to provide as evidence since he had already served it upon the tenants. Provided as evidence is a second handwritten note the landlord testified duplicates the original. The notice reads as follows:

*Here is your 2nd eviction notice due immediately for non-payment of rent.
There is overdue \$200.00 for an unapproved unacceptable structure put in
the driveway.
There will be an inspection @ noon tomorrow.
Your unlicensed dogs need to be licensed immediately and restrained
There are complaints from neighbours that they are running loose, crapping
on others properties and scaring an elderly neighbour.
Thank you,
[landlord].*

When the landlord came back on May 17th, he was once again denied entry to the rental unit. The landlord was accompanied by a witness and a police constable, neither of whom were called as witnesses in this hearing.

On May 18th, the landlord served the tenants with a One Month Notice to End Tenancy for Cause ("Notice") with an effective date of July 14, 2019. The reasons provided on the Notice were:

- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

Under details of cause, the landlord has stated:

- Defendant has interfered with the landlord's lawful right by refusing entry twice for notified 24 hr. inspection. Second instance witnessed by [name]. 2.) refusing to license dogs according to local bylaws & rental agreement.

The landlord alleges further instances of the tenant not allowing him access after the notice was given, however that evidence was not considered.

The landlord provided a witnessed proof of service document indicating he served the Notice by attaching a copy on the door or other conspicuous place at 8:10 p.m. on May 18, 2019.

The tenant provided the following testimony. On May 14th, he was told by the landlord that he was going to increase the rent by \$100.00. The tenant advised the rent increase was too high and that the landlord was required to provide adequate notice.

The only written notice provided by the landlord seeking entry to the rental unit was the one provided on May 16th, left attached to the tenant's door. As it was not personally delivered, the tenants felt they were not required to provide the access because service by posting to the door is deemed served 3 days later.

On May 16th, the dogs' licenses had expired and immediately after the landlord reminded them of it, they had the dogs licensed.

The tenants testified that they have found another accommodation to live, however they still dispute the landlord's Notice. Although they moved out on June 29th, they still have possessions at the rental unit which they cannot access. They acknowledge they had changed the locks to the rental unit, but the landlord has since changed it again preventing them from accessing it.

Analysis

Although parties agree the tenants no longer reside at the rental unit, the application before me is whether the landlord has sufficiently satisfied me whether he had grounds to end the tenancy on May 18th, the day he served the Notice upon the tenants.

In accordance with sections 88 and 90 of the Act I find the tenants deemed served with the One Month Notice to End Tenancy for Cause on May 21st, three days after the landlord posted it to their door on May 18th. The tenants filed for dispute resolution on May 23rd, two days after receiving the Notice.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that when the landlord gave Notice to the tenants, the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that as of May 18th, 2019:

- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord; [section 47(1)(e)(iii)]
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; [section 47(1)(h)]

The landlord has testified that the reasons for ending the tenancy is because the tenants denied him entry within 24 hours of being provided written notice and because the tenants did not license their dogs.

I find the landlord has failed to prove on a balance of probabilities, the tenants have engaged in illegal activity jeopardizing his or another occupant's lawful right. Section 29 of the Act requires that the landlord give the tenant at least 24 hours written notice of his intention to enter the rental unit. The landlord testified his first notice was given verbally and was therefore not in compliance with section 29. While there is disagreement as to how the landlord provided the written 24 hours notice, I am not satisfied it was personally served on May 16th. The landlord was required to provide an additional 3 days notice if posted to the door, pursuant to sections 88 and 90 of the Act. Further, the landlord has not provided any evidence to show how denying access to the rental unit constitutes illegal activity as described on the One Month Notice.

Second, the landlord testified that licencing the dogs was a material term of the tenancy. The landlord testified he gave written notice to have the dogs licensed on May 16th and the tenant testified it was done immediately afterwards. I am satisfied on the testimony of the tenants that this material term of the tenancy was corrected within a reasonable time after written notice to do so was given. I find the landlord has not proven the grounds for ending the tenancy of breaching a material term.

Given these findings, I find the landlord has not proven any of the grounds for ending the tenancy and cancel the One Month Notice to End Tenancy for Cause issued on May 18, 2019.

As the tenants' application was successful, the tenants are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's One Month Notice to End Tenancy for Cause is cancelled. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the Act.

I issue a monetary order in the tenant's favour in the amount of \$100.00.

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: July 12, 2019

Residential Tenancy Branch