Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE IN THE COMOX VALLEY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking more time than prescribed to dispute a notice to end the tenancy, for an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

All evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenants be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and more specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord company is a property management company, and the landlord's agent is a property manager, who testified that this fixed term tenancy began on February 1, 2019 and expires on January 31, 2020 after which the tenancy converts to a month-to-

month tenancy, and the tenants still reside in the rental unit. Rent in the amount of $2,200.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $1,100.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on April 17, 2019 the tenants were served with a One Month Notice to End Tenancy for Cause (the Notice) by registered mail. A copy of the Notice has been provided as evidence for this hearing and it is dated April 17, 2019 and contains an effective date of vacancy of May 31, 2019. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
    - put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants misrepresented the Application for Tenancy. The tenants have taken out a laundry sink and installed a hair salon sink. They also changed a light fixture in the den. The tenants had asked if they could modify the den in front of the home to practice yoga by changing the flooring to hardwood or a different type of flooring, but the owner said, "No," but the tenants did so anyway, but promised to return it to its original condition when the tenants move out.

The landlord could be fined for having a business run out of the property without a business license. The Regional District sent a letter to the tenants, a copy of which has been provided for this hearing, and a copy was sent to the landlord. It is dated April 29, 2019 and speaks of a by-law complaint. A by-law enforcement office contacted the landlord's office checking to see if the landlord had granted permission for a business license for the tenants, and advised that a business is being run without a licence, and that the landlord is ultimately responsible. The landlord's office informed him that the owner was not prepared to sign off on a business license.

The landlord's agent inspected the rental home on April 15, 2019 with the tenants' permission and verified that a hair salon was set up. If the landlord had known about a salon, the landlord would not have entered into a tenancy agreement with the tenants. The rental unit is a furnished unit, and the bringing people into the home puts the landlord's property at risk. The septic system is the size for a single family home, not a commercial business, and considering subjecting it to salon chemicals, and to replace

the system would cost in the neighbourhood of $40,000.00, the landlord's property is at significant risk.

A final warning letter dated March 26, 2019 has been provided for this hearing, which the landlord's agent testified is for 2 businesses, one being a computer consulting business. The landlord believed that the computer business involved the tenant going to other homes or businesses.

The tenants cannot get a business license for the salon because the owner won't consent, and the tenants refuse to return the home to its original state.

Photographs have also been provided for this hearing, which are all dated before and after the tenancy began.

The landlord's witness (JM) testified that she is an assistant to the landlord's agent in the property management department of the landlord company, and inspected the rental unit with the landlord's agent at move-in and again after the hair salon was installed.

The owner had requested that a notice to end the tenancy be issued if the tenants didn't remove the hair salon and return the flooring, and everything else, back to its original state. Then it was noticed that a hairdressing sink had been installed and the laundry sink removed.

During cross examination the landlord's witness testified that tenants are encouraged to correspond by telephone for issues because the landlord company has a large portfolio, and that receiving too many emails might result in the landlord not being able to answer them in a timely manner. One of the tenants called the landlord's agent on May 3, 2019, and the witness was present. At the end of the conversation, the landlord's agent asked if the tenant had received the Notice, but had not. Then on May 6, 2019 the landlord's office received text messages demanding information. The Notice was sent out by registered mail on April 17, 2019 which is a method permitted in the rules, and is deemed to have been received on April 22, 2019. The tenant's 10 days to dispute expired on May 2, 2019.

The first tenant (LJ) testified that due to a major break-in at Canada Post, the tenants hadn't checked their mail regularly, in addition to other distractions. The tenants did not believe anything in the mail was particularly urgent.

There are 3 main issues - #1 running business: The owner and landlord's agent are under impression that they have to give permission, however, the tenant believes this qualifies

under a tenant's right to quiet enjoyment. There is nothing in the tenancy agreement about it. Residential Tenancy Policy Guideline #14 addresses the jurisdiction of the *Residential Tenancy Act* about running a business. The percentage of space used for business purposes is significantly less than the residential part. It's a legal business, and there have been no complaints by neighbours. A business license can be dealt with simply by the owner giving permission.

The issue of risk is #2. Risk to the septic is relevant to both businesses, and the landlord's agent didn't ask or seek clarification about the computer business. The tenant has workshops and sees clients, and foot traffic is misleading. The tenants tried to find out about potential risk to the septic, but the landlord stopped them. The tenants did research online and there is no way to assess that because the landlord won't engage. The tenants have business insurance and clients remain with the tenants, not wondering throughout the home.

#3 – According to Residential Tenancy Policy Guideline #1, the tenants are under an obligation to return the rental unit to its original condition before vacating or will be liable. The landlord's agent and the owner have acted in a way not in line with the *Residential Tenancy Act.* Changing flooring is one example of that. Giving a notice to end the tenancy is pretty heavy handed.

The tenant testified that the tenants did not need permission, but when it was denied, they went ahead. If the landlord refuses to provide permission so that the tenants can get a business license, the landlord is interfering with the tenants' quiet enjoyment.

The second tenant (LM) testified that any home that she has made changes to were returned to its original state. The tenant asked the landlord about flooring to give the landlord an opportunity to put in the flooring the landlord wanted, because the carpet was stained and ugly. When the landlord denied that, it didn't matter what flooring the tenants installed because the tenants would have to remove it at the end of the tenancy, which is easily done.

The newer lighting was installed by an electrician, and changing the laundry sink was a minor change that took less than an hour. The plumbing was originally plastic and the tenants replaced it with braided metal, so will be in better condition at the end of the tenancy.

It is not outside of the tenants' right to run a business, and the only reason they can't get a business license is because of the landlord. The tenant did not know that the landlord

had to agree until the tenant received the paperwork to apply for the business license. The tenant has commercial insurance and is covered.

Analysis

Where a tenant disputes a notice to end a tenancy the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. However, the *Act* also requires that a tenant dispute a One Month Notice to End Tenancy for Cause within 10 days of service or deemed service. In this case, the landlord has provided proof that the Notice was served by registered mail on April 17, 2019, which is deemed to have been received 5 days later, or in this case, April 22, 2019. The 10 day period expired on May 2, 2019, and the tenants filed the Application for Dispute Resolution disputing the Notice on May 6, 2019.

The tenants rely on Residential Tenancy Policy Guidelines as a defense to having a business without a business license, and that as a result of the landlord's failure to give the permission required, the landlord is interfering with the tenants' right to quiet enjoyment. I also consider Residential Tenancy Policy Guideline #36 – Extending a Time Period, which states, in part:

> "The *Residential Tenancy Act*[1] and the *Manufactured Home Park Tenancy Act*[2] provide that an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances.***
>
> "The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said."

In this case, one of the tenants testified that due to a break-in at Canada Post the tenants, who didn't believe there might be anything important to claim, didn't check the mail and therefore didn't receive the One Month Notice to End Tenancy for Cause and subsequently failed to file the Application for Dispute Resolution on time. I do not find that to be exceptional circumstances or compelling. Further, there is no persuasive evidence to support the truthfulness of that testimony.

Therefore, I dismiss the tenant's application seeking more time than prescribed to dispute the Notice.

The *Act* also states that if a tenant does not dispute a One Month Notice to End Tenancy for Cause within 10 days of service or deemed service, the tenant is conclusively presumed to have accepted the end of the tenancy. Given that the tenants' application for more time than prescribed to dispute the Notice has been dismissed, I find that the tenants are conclusively presumed to have accepted the end of the tenancy. Therefore, I dismiss the tenants' application seeking to cancel the Notice.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act.* Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy contained in the Notice has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants. This order is final and binding and may be enforced.

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 19, 2019

Residential Tenancy Branch