



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, RP

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and,
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62.

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

The landlord objected to the tenants' service of the Notice of Hearing and Application for Dispute Resolution. The landlord testified that she received these documents by text message on July 31, 2019. However, the landlord testified that she was able to read the notice on her telephone and she was prepared to conduct the hearing. The landlord also submitted evidence in opposition to tenants' application. Since the landlord attended the hearing, submitted evidence for the hearing and stated that she was prepared to conduct the hearing, I find that the landlord was sufficiently served pursuant to section 71(2)(c) of the *Act*.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

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.

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the One Month Notice.

The tenants' other claims are unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all the tenants' claims with leave to reapply except for the cancellation of the One Month Notice.

Preliminary Matter: Confidential Letter Provide By The Landlord

The landlord produced a letter from an individual that requested to remain confidential. I have not considered the letter presented by the landlord from the individual who requested the letter to remain confidential.

I am not satisfied that the landlord has obtained the consent of that individual to disclose the contents of their letter and I find that it would be improper to disclose the contents of the letter without the writer's consent. Furthermore, I find that it would be unfair to the tenants and a breach of the principles of natural justice to use the contents of the letter as evidence without disclosing the contents of the letter to the tenants.

Accordingly, I shall not consider this letter as evidence in deciding this matter.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the landlord's One Month Notice pursuant to section 47?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Background and Evidence

The tenancy started on May 1, 2019. The monthly rent is \$900.00 and the landlord holds a \$500.00 security deposit. The rental unit is a basement suite with two bedrooms. The landlord testified that the rental unit is approximately 760 square feet in area.

The landlord served the One Month Notice on June 29, 2019. The One Month Notice stated the following grounds for ending the tenancy:

- The tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant.
- Tenant knowingly gave false information to prospective tenant or purchase of the rental unit/site or property park.

The landlord testified that the tenant has multiple occupants which were not stated on the tenancy agreement. The landlord testified that the addendum to the tenancy agreement stated that all additional occupants needed the landlord's permission.

The landlord also testified that the tenants had four to five cats even though only one dog was permitted in the rental unit. The landlord testified that the addendum to the tenancy agreement prohibited additional pets.

The landlord also testified that the tenants have been smoking and using drugs in the rental unit.

In addition, the landlord testified that the police have responded to the rental unit multiple times and they arrested tenant B.B. on one occasion.

The landlord provided a letter from her property manager which stated that the tenants had multiple cats in the rental unit. The property manager also stated that she was "...told by sources not wanting to give their names that they are doing meth, heroin and smoking in the suite."

The landlord also provided a letter from the upstairs tenants which stated that the tenants are loud and a drug smell comes up from vents from the rental unit. The landlord also provided a letter from a neighbour which stated that the tenants are loud and they have multiple cats.

The tenants testified that they had one roommate staying at the rental unit. The tenants testified that the roommate moved out three to four weeks ago.

The tenants testified that the police only went to the rental unit one time.

The tenants testified that they only smoke tobacco and cannabis outside. They testified that they did not smoke inside the rental unit.

The tenants testified that the landlord authorized the tenants to bring the cats into the rental unit.

The tenants testified that rental unit had a large black mold issue. The tenants testified that they received the One Month Notice shortly after complaining about the black mold and the tenants allege that the One Month Notice is retaliatory.

The tenants also that the landlord has violated the tenants' privacy by having photographs taken through the windows of the rental unit. The landlord denied violating their privacy.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a. The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b. The tenant is repeatedly late paying rent;
- c. There are an unreasonable number of occupants in a rental unit;
- d. The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- e. The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- f. The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- g. The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- h. The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- i. The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;
- j. The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- k. The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- l. The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - i. The date the tenant receives the order;
 - ii. The date specified in the order for the tenant to comply with the order.

A tenant may dispute a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46(4) of the *Act*. Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

The landlord's One Month Notice claimed the following basis for ending the tenancy for cause: (i) the tenant has allowed an unreasonable number of occupants in the unit/site; (ii) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant; and, (iii) the tenants knowingly gave false information to prospective tenant or purchase of the rental unit/site or property park.

I will analyze each of these grounds for ending the tenancy separately.

i. Unreasonable Number Of Occupants

The landlord is seeking to end the tenancy on the basis that the tenant has an unreasonable number of occupants. The tenants provided testimony that they had one occupant staying at the rental unit temporarily. The landlord testified that multiple occupants were living at the rental unit but the landlord failed to provide specific evidence as to the number of occupants in the rental unit or the times the occupants resided there.

In the absence of specific evidence, I find that the tenants' testimony that they had one occupant residing there to be equally as likely as the landlord's testimony that multiple tenants were living there. As the landlord has the burden of proof, I find that the landlord has failed to provide sufficient evidence to establish that the tenants had more than one occupant.

Furthermore, I find that one occupant staying with two tenants in a two-bedroom rental unit is not an unreasonable number of occupants.

The landlord also argued that the tenancy agreement prohibited additional occupants. However, whether or not the tenancy agreement prohibits additional occupants is not relevant to the determination of whether a landlord has an unreasonable number of occupants pursuant to section 47(c). The landlord could have made a request to end a

tenancy for breach of the tenancy agreement pursuant to section 47(h). However, in this matter the landlord's One Month Notice did not state that breach of the tenancy agreement was a ground for ending the tenancy agreement. Accordingly, I cannot consider that ground on this application.

In addition, the landlord also argue that the tenants had pets in violation of the tenancy agreement. However, for the reasons stated above, since the landlord's One Month Notice did not state that breach of the tenancy agreement was a ground upon which she was seeking an end of the tenancy, I cannot consider whether the tenant's pets breached the tenancy agreement in this application.

For the forgoing reasons, the landlord's One Month Notice cannot be upheld on the basis of an unreasonable number occupants.

ii. Illegal Activity

The landlord has not produced sufficient evidence to establish that, on the balance of probabilities, the tenants have engaged in illegal activity at the property. The tenants have admitted that they smoked cannabis outside of the rental unit but the use of cannabis is not a crime.

The only specific evidence that the landlord presented that the tenants consumed illegal narcotics in the rental unit was a statement by the property manager also stated that she was "...told by sources not wanting to give their names that they are doing meth, heroin and smoking in the suite." However, I do not find this statement to be reliable without the identification of the witness that observed this. I find that the landlord has not produced sufficient evidence to establish that the tenants have engaged in illegal activity at the property.

In the absence of evidence that the tenant engaged in criminal activity, the One Month Notice cannot be upheld on this basis.

iii. False Information to Prospective Tenant or Purchaser

The landlord also seeks to end this tenant on the basis that the tenants knowingly gave false information to a prospective tenant or purchases of the rental unit. However, the landlord did not provide evidence that the tenants made any false

statement to a prospective tenant or purchases of the rental unit. Accordingly, the landlord's One Month Notice cannot be upheld on this basis.

For the forgoing reasons, grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

Conclusion

I dismiss all the tenants' claims, except for the cancellation of the One Month Notice, with leave to reapply.

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with 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: September 15, 2019

Residential Tenancy Branch