



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LRE OLC RP RR FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on November 22, 2019. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenants' application, amendment, and evidence. The Tenants confirmed receipt of the Landlord's evidence. Neither party took issue with the service of these documents.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenants' application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings, or unless the parties specifically pointed me to the evidence in their packages.

The Tenants acknowledged receiving the Notice on October 15, 2019. The Landlord issued the Notice for the following reasons:

- Tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under the details of cause section on the Notice, the Landlord stated that the Tenant breached clause #14 of the tenancy agreement by erecting a shed without their permission. The Landlord also explained that despite being given written notice to take the shed down, they did not.

During the hearing, the Landlord explained that they got a text message from the Tenants at the end of August 2019, stating that they had put up a shed in the yard. The Landlord stated that they immediately took issue with this and went to view the shed. After confirming that the shed was installed they noted that the Tenants had excavated

and altered the level of the yard in order to create a level building site for the shed. The Landlord provided photos into evidence, which show that the Tenants dug up a portion of the grass, and moved soil around.

The Landlord stated that this shed is not permitted under the local building regulations, and that no shed is allowed to be installed, lawfully. The Landlords stated that this is also echoed in the tenancy agreement, under clause 14, which specifies that the Tenants shall not cause or make any alterations to the property.

The Tenants stated that this shed is small enough that it is not covered by local building codes, and there should be no issue with leaving this structure where it is.

The Landlords stated they have had to give the Tenants numerous caution notices for a variety of things over the years, and this shed issue is the final straw. The Tenants stated that they put this shed up to hold some of the Tenants tools, and to house the garbage cans. The Tenants stated that they have seen other neighbours have similar sheds, so they figured it wouldn't be an issue. The Tenants acknowledge that they never got written or explicit permission from the Landlord prior to installing the shed. The Tenants acknowledge that the shed is still standing, despite being told, and warned to take it down. The Tenants stated they do not believe having this shed violates any bylaws or that it is any different than having a patio set (because it is merely a temporary structure), and this is why they refused to comply with the Landlord's request to take it down.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenants received the Notice on October 15, 2019, and applied to dispute it on October 16, 2019.

The Landlord selected two grounds on the Notice, as follows:

- Tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The issue which underpins this Notice is regarding the Tenants' decision to erect a garden shed and to level the building site for the shed. This is the only issue identified on the Notice under the details of cause section, and as such, this is the issue I will focus on. I will determine whether or not the issue surrounding the garden shed gives the Landlord sufficient cause to end the tenancy based on either of the two grounds they selected.

I turn to the following relevant portions of the Act:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

[...]

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], 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;

Landlord and tenant obligations to repair and maintain

32 (3) *A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

First, I turn to the first ground selected on the Notice, whether the Tenants have failed to do required repairs of damage to the unit/site. Section 47 (1) (g) allows the Landlord to end the tenancy if the Tenants failed to repair damage to the residential property, under section 32(3), after being given a reasonable opportunity to do so.

I also note the following:

Policy Guideline #1 - Landlord & Tenant – Responsibility for Residential Premises

FENCES AND FIXTURES

The tenant must obtain the consent of the landlord prior to erecting fixtures, including a fence.

The Tenants acknowledged that they did not get the express or written permission from the Landlord prior to erecting the garden shed and altering the landscaping around the shed. The Residential Tenancy Policy Guidelines provide some general guidance on this matter, in that the Tenants must not erect any structures or fixtures without the consent of the Landlord.

I note the Tenants told the Landlords at the end of August, via text message, that they put up a shed. The Landlords immediately took issue with this structure, as they believed it contravened the local bylaws, set-back requirements, neighbourhood rules, and the tenancy agreement. The Landlords also were concerned that the Tenants excavated and damaged the grade and slope of the yard in order to level the ground. The Landlords pointed to term #14 of their tenancy agreement to show that the Tenants agreed that they would not make any structural alteration to the property.

Having reviewed the evidence and testimony, in totality, I note there are photos showing the shed, and its location. The Landlords stated, and the pictures showed, that the Tenants had to excavate a part of the land in order to level the spot where the shed was erected. The Landlord expressed that this has damaged the lawn, vegetation, and natural grade of the lot. I note the Landlords provided a formal written caution notice to the Tenants on September 14, 2019. The Tenants do not deny getting this written notice. In fact, it appears they were well aware the Landlord wanted the shed down, and the yard restored by a certain date, yet they didn't comply. I note that the caution notice explicitly told the Tenants that they violated the tenancy agreement when they erected the shed without consent, and the Landlords requested that this shed be removed by September 21, 2019, which was a week after the notice was given. The Tenants confirmed that they still have not removed the shed, and do not feel they should have to.

Although the damage to the lawn, and the grade of the yard in and around the shed is not extensive, the photos do show that some excavation and damage was done to the area. The Tenants erected this shed and altered the landscaping without consent, which violated the tenancy agreement (clause 14). Given a small portion of the lawn and yard was altered and damaged, I find the Landlords were entitled to ask the Tenants to fix the damage and remove the shed. I find one week to do this is reasonable. Not only did the Tenants fail to remove the shed and restore the damaged landscaping within the

time period given, they failed to do it at all. Given the Tenants failed to repair and restore the shed area within the time limit given, I find the Landlord had cause to end the tenancy. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending. Given my findings on this matter, it is not necessary to consider the second ground listed on the Notice.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

As the Tenants were not successful with their application, I dismiss their claim to recover the cost of the filing fee.

Conclusion

The Tenants' application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed. Further, I dismiss the Tenants' request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective **November 30, 2019, at 1pm**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: November 22, 2019

Residential Tenancy Branch