



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC FFT OLC**

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**"), pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement, specifically that the landlord reinstate the tenant's access to Wi-Fi in the rental unit, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing. The landlord was represented by an agent ("**GJ**"). Each was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and GJ confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. I find that the landlord has been served with the required documents in accordance with the Act.

The landlord did not provide any documentary evidence in support of her response to the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) an order that the landlord reinstate Wi-Fi in the rental unit; and

- 3) recover his filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Neither party submitted a copy of the tenancy agreement into evidence. However, the parties agreed that the parties entered into a written tenancy agreement in August or September 2015. The rental unit is a basement suite. The landlord resides in the upstairs suite. Monthly rent is \$450. The tenant paid the landlord a security deposit of \$250. The landlord still retains this deposit.

Notice to End Tenancy

On September 19, 2019, the landlord served the Notice on the tenant by posting it on the door to the rental unit. The Notice has an effective date of October 31, 2019. The tenant applied to cancel the Notice on September 20, 2019.

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlord wrote on the "Details of Cause" section of the Notice:

Only one washroom in the landlord's space. Need to give tenant's washroom and space to parents (65+). One month notice was given before. Two month notice was given in May 2019. This is becoming unreasonable.

GJ testified that the basis for issuing the Notice was so as to obtain additional living space and bathroom access for the landlord's parents, who live with the landlord, and not, as indicated on the Notice, due to any interference or disturbance caused by the tenant.

The parties have appeared before the Residential Tenancy Branch on two prior occasions. The tenant provided the files number of these application, and portions of the presiding arbitrators' written decisions. The hearing addressed the following issues:

- 1) July 16, 2018 – the tenant’s application to cancel a one month notice to end tenancy (written decision issued July 16, 2018); and
- 2) July 12, 2019 – the tenant’s application to cancel a two month notice to end tenancy (written decision issued July 15, 2019).

The tenant was successful in both cases, and both notices were cancelled.

Order to Reinstate Wi-Fi

The tenant testified that the landlord provided him with internet access (including the password for Wi-Fi) from the start of the tenancy until July 21, 2019. He testified that the landlord permitted him to “run a cable” into the landlord’s unit to obtain internet service, and also provided him with the Wi-Fi password.

He testified that the landlord cut off his internet access on July 21, 2019 and has not reinstated it since. He testified he believed the landlord did this as a result of their application to end the tenancy on July 12, 2019, being unsuccessful.

GJ agreed that the landlord granted the tenant access to the internet from the start of the tenancy to July 21, 2019 (both by the running of a cable, and by giving him the Wi-Fi password). GJ testified that the provision of Wi-Fi was not written into the tenancy agreement, and that the landlord provided this as a courtesy. She testified that the reason for ending the tenant’s internet access was due to a change in the landlord’s internet plan, which, she says, prevents the landlord from providing the tenant access to the internet. The landlord provided no documentary evidence (a copy of her new internet plan, for example) to confirm this assertion.

Analysis

Authorities

Section 47(1) of the Act sets out the permissible reasons that a One Month Notice to End Tenancy may be issued:

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:

- (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 a 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) [*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;
- (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 [*assignment and subletting*];
- (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.

Section 62 of the Act states:

Director's authority respecting dispute resolution proceedings

62(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord has the onus to prove that the Notice was issued for a valid reason under section 47 of the Act.

Additionally, the tenant has the onus to prove that the landlord has breached the tenancy agreement, and that an order that the landlord comply with the tenancy agreement is warranted.

Notice to End Tenancy

GJ testified that the Landlord's reason for ending the tenancy was that the landlord required additional living space and bathroom access for her parents. This is not a valid basis to issue a one month notice to end tenancy under section 47 of the Act. As such, the Notice is invalid, and I order that it is cancelled and of no force and effect. The tenancy shall continue.

I should note that the reason to end the tenancy listed on the Notice *may* be a valid reason to end the tenancy pursuant to section 49 of the Act. However, such a basis to end the tenancy requires two months notice to the tenant, not one month. I also note that the landlord has previously attempted to end the tenancy this way (at the July 2019 application hearing), and had the two month notice cancelled.

If the landlord believes that the outcome of the July 2019 application was incorrect, they have the ability to apply for a review of that decision with the Residential Tenancy Branch, or a judicial review with the BC Supreme Court. It is inappropriate that they continue to issue notices to end tenancy to the tenant for the same reason. Such conduct is unreasonable and may be found by another arbitrator to be a breach of the Act (I make no such finding here).

Order to Reinstate Wi-Fi

Based on the testimony of the parties, I find that the written tenancy agreement does not contain reference to the landlord's provision of the internet to the tenant. I also find that the landlord provided the tenant with access to the internet from the start of the tenancy to July 19, 2019 (both by allowing the cable to be run, and by providing the tenant with the Wi-Fi password).

I do not find GJ's testimony that the landlord was forced to terminate the tenant's access to the internet because she changed internet plans to be credible. It is not corroborated by any documentary evidence (which should have been relatively simple for the landlord to provide). Additionally, GJ provided no evidence as to why the landlord switched internet plans.

I find that the tenant's assertion that the landlord cut off his internet access as a means to pressure him to vacate the rental unit to be a more likely reason for the landlord ending the internet service. I find that the timing of the termination of the internet service (July 21, 2019) coincides with the issuance of the written decision cancelling the landlord's two month notice to end tenancy (July 15, 2019). Even if the landlord did terminate the tenants' internet access due to a change in their internet plan, I find that the landlord obtaining such a change would have been motivated by their desire to exert pressure on the tenant to vacate the rental unit.

Based on the conduct of the parties, which includes:

- 1) the length of time the landlord provided the tenant with internet access;
- 2) the fact the landlord provided the internet access to the tenant from the very start of the tenancy; and
- 3) that the landlord terminated the tenant's internet access as a means to pressure him to vacate the rental unit after their two-month notice to end tenancy was cancelled,

I find that it is an oral, unwritten term of the tenancy agreement that the landlord would provide the tenant with internet access. As such, I find that the by terminating the tenant's internet service, the landlord has breached the tenancy agreement.

Accordingly, pursuant to section 62 of the Act, I order that the landlord re-instate the tenant's internet access immediately. If the landlord fails to do this by December 31, 2019, the tenant may deduct \$50 from his January 2020 rent. If the landlord fails to do this by January 31, 2020, the tenant may deduct an additional \$25 (for a total of \$75) from his February 2020. For each subsequent month that the landlord fails to provide the tenant with internet access, the tenant may deduct an additional \$25 from the following month's rent (for example \$100 from March 2020 rent, \$125 from April 2020 rent and so on), until the landlord reinstates the internet service.

Pursuant to section 72(1), as the tenant has been successful in his application, he may recover his filing fee of \$100 from the landlord. Pursuant to section 72(2) of the Act, the tenant may deduct \$100 from his next month's rent in compensation for this amount.

Conclusion

The tenant is successful in his application. I order that:

- 1) The Notice is cancelled and of no effect.
- 2) The landlord must reinstate the tenant's internet access immediately.
- 3) The tenant may deduct \$100 from his next month's rent in satisfaction of his recovering the filing fee for this application from the landlord.

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 26, 2019

Residential Tenancy Branch