



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OPTIMUM REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ FFT
 CNC CNQ FFT OLC RP

Introduction

This hearing was convened by way of conference call concerning 2 applications filed by the tenant which have been joined to be heard together. The first application seeks an order cancelling a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit; and a monetary order to recover the filing fee from the landlord for the cost of the application. The second application seeks the same orders again, in addition to an order cancelling a One Month Notice to End Tenancy for Cause; an order that the landlord comply with the *Act*, regulation or the tenancy agreement; an order that the landlord make repairs to the rental unit or property; and to recover the filing fee.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing the tenant advised that he did not have the landlord's evidentiary material, but takes no issue with that. However, the landlord has provided proof that the evidence was sent to the tenant by registered mail on November 18, 2019. I find that the landlord has established that the evidence was provided to the tenant by way of a method provided by the *Residential Tenancy Act*. No further issues with respect to exchange of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Also, during the course of the hearing the landlord's agent testified that the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit was issued in error. Therefore, I cancel that Notice.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act* with respect to entering the rental unit?
- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?

Background and Evidence

The landlord's agent (hereafter called the landlord) testified that this fixed term tenancy began on September 1, 2018 and expired on August 31, 2019 thereafter reverting to a month-to-month tenancy and the tenant still resides in the rental unit. Rent in the amount of \$1,250.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$625.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a building containing 24 rental units, none of which are subsidized housing units. Copies of the tenancy agreement and Addendum have been provided as evidence for this hearing.

The landlord further testified that on October 31, 2019 the landlord served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated October 31, 2019 and contains an effective date of vacancy of November 30, 2019. The landlord testified that he posted it to the door of the rental unit and the tenant opened the door at that moment so the landlord gave it to the tenant personally. The landlord then stated that he was mistaken and in fact posted the Notice to the door of the rental unit on October 31, 2019. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

With respect to repeated late rent, the landlord has provided 5 notices to end the tenancy for unpaid rent or utilities, but was not able to provide accurate information on when rent was paid. The landlord testified that no rent has yet been paid for November or December, 2019 and the tenant is currently in arrears the sum of \$2,500.00. Each of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities states that the tenant failed to pay rent in the amount of \$1,250.00 and \$25.00 late fee, however the landlord testified that although the Addendum to the tenancy agreement specifies a fee of \$3.00 per day for late rent payments, the landlord never collects more than \$25.00.

With respect to the second reason for issuing the Notice, "Tenant has allowed an unreasonable number of occupants in the rental unit," the landlord testified that the tenant had asked for an extra building fob in August, 2019 stating that his cousin from England was visiting. The landlord has provided a copy of an email from a person stating that the tenant had sublet the apartment to the writer. The tenant was subletting the rental unit on Air BNB. The Addendum specifies no short term rentals.

With respect to the next reason for issuing the Notice, "Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk," the landlord testified that the tenant burns strong incense, which the landlord believes is to cover other smells. Also, using the rental unit for commercial use prevents the landlord's ability to control the safety of the building.

The next reason for issuing the Notice is: "Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit." The landlord testified that is a mistake.

The landlord also testified that the next reason for issuing the Notice: "Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order," refers not to any order but a regulation in the City that no commercial use for short-term rentals is permitted without a permit.

Assigning or subletting the rental unit refers to the short-term rental.

The landlord has provided a copy of a letter that the landlord sent to the tenant dated November 18, 2019 stating that the tenant would be charged \$100.00 per day since August, 2019. It also states that the landlord had issued another warning letter with a fine of \$3,000, and that the amount of the minimal fine is rightly justified by illegally using the rental premises for Air BNB rental for the entire month of August to more than one Tenant.

The tenant testified that he wanted to have an extra fob and the landlord said he'd provide it but didn't show up as promised. The tenant paid an additional \$50.00 as requested by the landlord, then the landlord said he couldn't make it. Instead of showing up in a few days as he promised, the landlord showed up at the rental unit when the tenant wasn't home. The tenant had 2 guests who called the tenant saying that the landlord showed up asking what they were doing there. The landlord texted the tenant saying that the fob was placed in his mailbox, and the landlord said the guests had to be out in 10 days or he would evict.

The tenant went to the landlord's office the following day and told the landlord that he wanted people there while the tenant was out of town, and the landlord agreed that the guests could stay for the month of August. The tenant was away for a month and returned around mid-September. The landlord gave permission and then turned against the tenant.

Later, the landlord gave the tenant the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit and sent the tenant a text saying sorry but the tenant was evicted. The landlord wouldn't talk to the tenant and threatened to call police, so the tenant stopped communicating with him.

The tenant further testified that the landlord told the tenant he had to give the landlord \$3,000.00 in order to stay in the rental unit, which amounts to extortion. The tenant contacted the Residential Tenancy Branch and was told that it was illegal.

The tenant also testified that the landlord attended at the rental unit with a friend who does maintenance, early in the morning to repair the toilet knob. However, the landlord busted his way into the rental unit and yelled profanities at the tenant. The tenant seeks an order that the landlord not attend the rental unit without sufficient notice.

With respect to the tenant's claim for repairs, the tenant testified that he had asked the landlord to fill a crack in the kitchen floor. The landlord said he'd take care of it, but never did.

The tenant disputes that rent is owed for November, 2019.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy*

Act, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute.

With respect to the first application filed by the tenant seeking to cancel the “Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit,” the landlord agreed that it was issued in error. However, if the tenant had not disputed it, the tenant might be conclusively presumed to have accepted the end of the tenancy. Therefore, I find that the tenant is entitled to recovery of the **\$100.00** filing fee.

With respect to the second application filed by the tenant, the same Two Month Notice has been withdrawn by the landlord.

The One Month Notice to End Tenancy for Cause contains several reasons for issuing it, the first being repeated late rent. The landlord has provided numerous 10 Day Notices to End Tenancy for Unpaid Rent or Utilities but was not able to give any testimony and provided no evidence of when rent was paid. I cannot find, in the evidence before me that the landlord has established repeated late rent.

The landlord testified that: “Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit,” was an error.

With respect to “non-compliance with an order under the legislation within 30 days after the tenant received the order,” the landlord also testified that there is no order but the City requires permits for such short-term rentals. That does not satisfy the requirements in the *Act* as a reason to end the tenancy.

The landlord testified that he smelled incense coming from the tenant’s rental unit and believed it was to cover another odour, such as smoking. The landlord also testified that by having other people in the rental unit and using the rental unit for commercial use prevents the landlord’s ability to control the safety of the building. I fail to see how the landlord’s property could be at risk significant enough to warrant ending the tenancy.

That leaves 2 other reasons for ending the tenancy: “Tenant has allowed an unreasonable number of occupants in the unit/site;” and “Tenant has assigned or sublet the rental unit/site without landlord’s written consent.” Although I see no written consent, the tenant testified that the landlord allowed it for the month of August only, and the landlord did not dispute that. A landlord may not give verbal consent and then choose to end the tenancy as if no verbal consent had been given.

I also cannot ignore the November 18, 2019 letter referred to by the landlord which advised the tenant that the tenant would be charged \$100.00 per day since August,

2019 and that the landlord had issued another warning letter with a fine of \$3,000.00, and that, "the amount of the minimal fine is rightly justified by illegally using the rental premises for Air BNB rental for the entire month of August to more than one tenant." There is no legislation that provides for that, and I find that it was no more than a threat.

In the circumstances, I am not satisfied that the landlord has established cause to issue the One Month Notice to End Tenancy for Cause, and I cancel it. The tenancy continues.

The tenant has also applied for an order that the landlord comply with the *Act* or the tenancy agreement by giving appropriate notice prior to entering the rental unit. The *Act* specifically states (my underlining added):

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The tenant testified that the landlord does not give written notice to enter, but has pushed his way in, and the landlord didn't dispute that, only argued about it. Therefore, I order the landlord to comply with Section 29 as set out above.

The *Act* also permits me to make any orders necessary to give effect to the rights, obligations and prohibitions under the law, including an order that a landlord or a tenancy complies with the law, the regulations or the tenancy agreement. In this case, the tenancy agreement contains a term that fees for late payment of rent are \$3.00 per day, which is contrary to the law. A landlord may only charge a late fee of \$25.00 for each late rent payment and only if it's contained in the tenancy agreement. I find that what is contained in the tenancy agreement is unlawful and I find that the term for all purposes is void. I order that the landlord cease charging any fee for late rent payments.

The tenant has not satisfied me that he has established that the landlord ought to be ordered to make repairs to the rental unit, and I dismiss that portion of the claim.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the second **\$100.00** filing fee.

I grant a monetary order in favour of the tenant in the amount of **\$200.00** as recovery of the 2 filing fees and I order that the tenant be permitted to reduce rent on a one time basis only by that amount, or may otherwise recovery it.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated September 24, 2019 is hereby cancelled.

The One Month Notice to End Tenancy for Cause dated October 31, 2019 is hereby cancelled and the tenancy continues.

I order the landlord to comply with Section 29 of the *Residential Tenancy Act* as set out above.

I order that the landlord cease charging any fee for late rent payments.

The tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$200.00 and I order that the tenant be permitted to reduce rent on a one time basis only by that amount or may otherwise recover it by enforcing it in the Provincial Court of British Columbia, Small Claims Division.

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: December 05, 2019

Residential Tenancy Branch