



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SATGURU ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order of possession for cause, pursuant to sections 47 and 55 of the *Act*.

The tenants did not attend this hearing, although I left the connection open until 9:58 AM to enable the tenants to call into this teleconference scheduled for 9:30 AM. The landlord's representative SG attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's representative and I were the only ones who had called into this teleconference.

I accept SG's testimony that the tenants were served with the notice of hearing and evidence (the Materials) by registered mail on November 13, 2019, in accordance with section 89 of the *Act* (the tracking numbers are reproduced on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenants are deemed to have received the Materials on November 18, 2019.

Issue to be Decided

Is the landlord entitled to an order of possession for cause?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

As per the testimony of the landlord's representative, the tenancy began on August 01, 2016. Monthly rent is \$900.00 and is due on the first day of the month. At the outset of the tenancy a security deposit of \$450.00 was collected and the landlord still holds it in trust. The tenants are still living at the rental unit.

A One Month Notice to End Tenancy for Cause (the Notice) was produced as evidence. The Notice is dated October 31, 2019, indicates it was served in person to the tenants on October 31, 2019, and the effective date is September 30, 2019.

The grounds to end tenancy cited in the Notice were:

- Tenant has allowed an unreasonable number of occupants in a rental unit;
- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential 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 another occupant.

The Notice also specifies that: "PERMIT TOO MANY VISITORS AT ALL HOURS OF THE DAY + NIGHT – MAJOR DISTURBANCE TO OTHER TENANTS."

Three documents were produced as evidence by the landlord:

- The written tenancy agreement;
- A notice of violation issued by the city of New Westminster. This notice, dated September 16, 2019, specifies that the tenants' suite has a large amount of combustible material.
- An inspection report, conducted by Fraser health institute on September 10, 2019. In this inspection the tenants' suite could not be thoroughly inspected because the tenants blocked access to rooms or areas of rooms where pests may frequent. The tenants were asked to remove unnecessary furniture and appliances and to clean their suites to aid the removal of pests with a deadline of one month.

In the application the landlord stated: “*PERMIT TOO MANY VISITORS WHO STAY OVER *MAJOR DISTURBANCES TO OTEHR TENANTS *REFUSAL TO KEEP PREMISES CLEAN & ORDERLY *** PLEASE SEE ATTACHED NOTICES FROM: 1 NEW WESTMINSTER FIRE & RESUCE 2. FRASER HEALTH THE TENANTS HAVE NOT DULY FOLLOWED DIRECTIONS TO RECTIFY ISSEUS OUTLINED IN THE ATATCHED NOTICES”

SG testified:

- He believes the notice was served on September 30, 2019, and the effective move out date is October 31, 2019;
- He is not sure why the Notice indicates it was served on October 31, 2019 and the effective date indicated is September 30, 2019;
- The Notice may have been filled wrongly;
- He is not sure why the fields in the Notice regarding unit number, effective move out date, notice date and date of service appear to have been modified;
- The tenants received both notices of inspection, and these notices of inspections are also reasons for the Notice;
- The tenants are having too many visitors all day long;
- Other tenants and neighbours complained about noise.

The tenants did not dispute the Notice.

Analysis

Section 52 of the Act describes the form and content of a notice to end tenancy as follows:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
 - (e) when given by a landlord, be in the approved form.

I find the landlord did not properly complete the Notice. The effective date and the date of service of the Notice appear to have been modified. In the testimony, the landlord was not able to explain when the Notice was served and the effective move out date.

I also find the reasons mentioned in the Notice (too many visitors and major disturbance to other tenants) are not related to the evidence provided by the landlord in this Application (pest and hoarding issues). All the reasons for the Notice must be clearly explained, which they are not.

Based on the affirmed testimony and conflicting evidence, I find the Notice is not in compliance with sections 52(c) and (d) of the Act. Accordingly, the Notice is set aside and the tenancy continues.

Conclusion

I set aside the Notice and dismiss the landlord's application without leave to reapply.

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 30, 2019

Residential Tenancy Branch