



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act) seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (Notice) and for recovery of the filing fee.

The tenants, their legal counsel, the named landlord and his spouse, a landlord named under the written tenancy agreement attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing in compliance with the Residential Tenancy Branch Rules of Procedure (Rules), make submissions to me, and respond each to the other's evidence. The legal counsel of the tenants also cross examined the landlords.

I have reviewed all evidence before me that met the requirements Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

The landlord submitted that the tenants' evidence was only received shortly in advance of the hearing and should not be considered,

The tenants' legal counsel said that the landlord's evidence was only delivered on January 13, 2020 and they had to have an opportunity to respond.

I note that it was not clear if the tenants filed some evidence with their application, as the RTB system reflects that they filed evidence on December 3, 2019; however, the evidence to which the landlord referred to as being late contained some duplicates of that January 13, 2020, evidence.

The RTB records reflect that some of the tenants' evidence was received 3 days prior to the hearing and another 1 page was received 5 days before the hearing.

I find the tenants failed to comply with the evidence requirements as their evidence was all to be submitted and received at least 14 days prior to the hearing.

I find the landlord complied with the evidence requirements as his evidence was received by the RTB on January 12, 2020, more than the 7 days allowed for respondent's evidence.

I have not accepted the tenants' evidence which was submitted late; however, I note that the tenants provided extensive oral evidence with regard to this evidence.

I have reviewed all evidence before me that met the requirements Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notices to end the tenancy and to recover the filing fee?

Background and Evidence

The written tenancy agreement submitted into evidence shows that this tenancy began on December 1, 2017, for a fixed term through October 1, 2018, and for a monthly rent of \$2,050.00. The rental unit is the upper suite of a house, and the landlords rent out the bottom suite to other tenants.

Both parties provided a copy of the Notice, which shows that it was dated on November 26, 2019, for an effective date of December 31, 2019. The undisputed evidence was that the Notice was served by personal service on November 26, 2019. The tenants' application was made on November 27, 2019, within the required timeline.

The reason stated on the Notice to end tenancy was:

- that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

The landlords provided the following testimony and references to their documentary evidence:

The tenants have continuously, even after repeated warnings, continued to flush wipes into the septic system. This flushing of wipes has put the landlord's property at significant risk, specifically damaging the septic system and potentially flooding the lower suite.

The tenants were advised at the beginning of the tenancy that nothing other than toilet paper and human waste could be flushed.

That the tenants have significantly interfered with the lower tenants' quiet enjoyment, security, safety, and well-being as they have spent considerable time and effort in cleaning up the flood caused by the tenants' toilet overflowing. The landlord referred to a signed affidavit by the lower tenants, which was submitted into evidence.

That the septic system was routinely inspected and pumped on October 24th, 2016. The inspection showed that the system was functioning properly and no wipes were found. The landlord referred to an invoice of October 24, 2016 to document this submission.

That the lower tenants have occupied the lower suite without issue, and it was not until the tenants moved in that wipes have been found in the septic system.

The landlord received an urgent message from the lower tenants on January 28, 2018, indicating that their toilet was bubbling and beginning to overflow. This came as a surprise to the landlords as septic systems should only require to be pumped out every 3-5 years.

The landlord called EarthService Drainmaster (EarthService) to have the system inspected, at which time it was discovered that the tank was blocked and full of water, indicating that the septic field was blocked. The company recommended cleaning the field to remove the blockage and the landlord informed the tenants that wipes were found in the septic system, creating the blockage. The landlord referred to his invoice of January 31, 2018, showing the pump-out and inspection.

The landlord asked the tenants if they used wipes, and tenant AB said she does to remove make-up and nail polish; however, she does not flush the wipes.

The landlord warned the tenants not to flush the wipes.

On March 21, 2018, EarthService repaired the septic system and cleaned and vacuumed the septic field lines. EarthService inspected the field with a camera to ensure all lines were clear and free flowing. The landlord referred to his invoice of March 21, 2018.

In January 2019, the landlord received another urgent message from the lower tenants saying that their toilet was bubbling and beginning to overflow, nine months after the last pump and service.

On January 20, 2019, the landlord called EarthService, who checked the septic tank. The result of this service showed it was full of liquid, but that solid levels were normal, indicating it was not draining properly. EarthService suggested that the problem might be due to over usage of water as a field is assumed to be clear and functioning due to the March 2018 cleaning.

EarthService left the lid exposed to monitor the levels and the landlord is notified that wipes are found in the tank and were told to monitor.

The landlord referred to his January 20, 2019, inspection invoice.

The tenants were sent a warning email on February 16, 2019, informing the tenants they have put the landlord's property at significant risk, specifically damaging the septic system as well as potentially flooding the lower suite.

A follow-up warning email was sent to the tenants on February 22, 2019.

This letter also informed the tenants that in the 7 years prior to the tenants moving in, the septic system had only required routine pumping at regular intervals every 3-5 years, giving the landlords cause to end the tenancy if any future problems arose.

On September 19, 2019, the lower tenants notified that water was flowing through their ceiling into their kitchen, as there were approximately 4 litres of water on the floor. This

caused the landlord to contact the tenants to find out what was happening and their response was that they plugged the toilet and it overflowed. The tenants did not notify the landlord of this problem.

The landlord inspected the water damage in the lower suite and found water damage to the ceiling, walls and cupboards. The landlord referred to the attached signed affidavit.

The affidavit was signed by the lower, female tenant, who also stated that she has noticed Costco size boxes of the wipes in the trash, that she does not and has not used the wipes for environmental reasons, that tenant AB runs a nail salon out of her home, causing an extra strain on the system as some clients seem to be taking showers, and that she has followed the landlord's instructions to flush only toilet paper and human waste.

On November 18, 2019, the lower tenants notified the landlord that their toilet is bubbling and water levels in the toilet were beginning to flow.

On November 19, the landlord called numerous companies to attempt to have the septic system serviced. The septic company inspected to check the levels and the inlet was found plugged due to baby wipes. That multiple baby wipes were found in all sections of the tank. A Kit Kat wrapper was also found in the tank. Tenant KR witnessed the baby wipes and the candy wrapper.

On November 20, 2019, Coast Environmental pumped out the tanks, inspected the septic system and found that the septic field is blocked. There is run-back water going back into the tank as the tank was pumped out. The landlord was notified that this is an indication of a blockage in the field and most likely due to baby wipes. Coast Environment noted baby wipes were found in the tank and recommended the septic field be inspected for blockages. The landlord referred to an invoice as evidence, labelled "Nov.20_2019_Pump_Out" and evidence showing wipes found indicated in "Coast_Technician_Notes".

On November 22, 2019, the landlord, while servicing the upper suite, noticed baby wipes on a shelf in the tenants' ensuite bathroom. The tenant AB still denied flushing the wipes. The wipes found in the rental unit are the same pattern as those found in the septic system, although there are many wipes in the store to choose from. The landlord referred to his photos.

On December 6, 2019, tenant KR tampered with the septic system, requiring another emergency service to pump out the tank. The landlord was notified by the lower tenants that there was a puddle over the septic tank. EarthService serviced the system and pumped it out.

The landlord also referred to a statement from a professional engineer showing a significant risk to a septic system when wipes are flushed.

Tenants' legal counsel cross-examination of the landlord-

The landlord said that they purchased the residential property in 2010 and it has always been fully "tenanted".

In 2010, Coast Environment studied the septic system and they were told it was okay to add an extra bedroom and bathroom. There are 4 bedrooms, 3 bathrooms and 2 laundry rooms.

Canadian Septic only said the septic system needed a repair, not replacement.

Legal counsel's arguments-

That it was the age of the septic system and extra usage from the additional bedroom, bathroom, and laundry room which caused the problems.

The system was so old, that it needed to be replaced, as it was no longer handling the flow.

The disposal field was the source of the problem, which caused the overflow in lower tenants' rental unit, as there were no issues with the tank.

The legal counsel referred to the report of the company the tenants hired in December 2019.

That report, 5 pages in length, was technical in nature in some parts, and in summary, the technician said that from what he observed during the inspection, which included a camera, an aging onsite dispersal system is working back toward the house and causing the elevated levels and back-ups into the house. The technician also said he

believed the presence of wipes in no way contributed to the decreased performance and ability for the system to treat waste water flows from the house.

The technician wrote that it was not necessarily “what” was coming out of the house and into the septic tank, but “how much” was coming out.

The evidence does not support that wipes caused the problems and there were only 2 verified wipes found.

Landlord's rebuttal to the legal counsel's arguments-

That the tenant KR posed as a landowner and without authorization hired someone who has not inspected the septic system. The report provided by the tenant was based upon incorrect information and was not aware of the repairs.

The tenants provided the following testimony and references to their documentary evidence:

KR said that when the Notice was first served, he phoned the RTB and was told he could hire an independent company and that they had a 4-person crew attend the rental unit.

KR did agree that there was a baby wipe and a candy wrapper in one of the inspections, as stated by the landlord, but that 2 baby wipes would not cause a blockage.

Tenant AB denied flushing wipes as she throws them in the trash. She said she had never heard of damage and that she first became aware of it when seeing the affidavit.

The issues with the septic system was the age as it could not handle the flow. The part between the house and tank would not block with wipes. Two baby wipes would not cause the septic field to flood.

The legal counsel submitted that the landlord's altered the receipt from Coast Environment, as on a separate page, were unsigned driver's note, not listed on the invoice. The tenants' submitted a copy of the invoice.

The legal counsel submitted that the landlords bolstered their evidence, as they added the driver's notes.

Landlord's rebuttal to tenants' evidence-

That a blockage can occur anywhere and that they have lots of evidence showing blockages since the tenants moved in.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 89 of the Act.

Section 47(1)(d)(iii) of the Act authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Notwithstanding the tenants' arguments that baby wipes could not and did not harm or do damage to the septic system, I find the landlord submitted sufficient evidence to support they did do damage or harm to the system.

In reaching this conclusion, I relied on the statements provided by a professional engineer and construction manager from a sewage solutions company, submitted into evidence by the landlord. The professionals here state that wipes can cause a blockage, resulting in a back-up, wrap around a filter and cause pre-mature plugging of "effluent filter". They also said in their opinion, wipes that do not break down are the number one cause of septic tank blockages.

The landlord also submitted proof, that when dealing with repairs to the septic system due to the complaints by the lower tenants, the repair companies found wipes in the system, in January 2018 and again in November 2019.

I also find the landlord submitted sufficient evidence to prove that the tenants flushed these wipes in the toilet. While tenant AB said she had never flushed a wipe, the tenants' position changed during the hearing. The later testimony of the tenants disagreed that only 2 wipes would not be enough to cause damage but did not deny flushing them.

I find their testimony to be inconsistent and therefore, unreliable. I therefore gave the tenants' testimony less weight.

I find also based upon the undisputed evidence that the landlord warned the tenants at the beginning of the tenancy and multiple times during the tenancy not to flush wipes and yet, in November 2019, wipes, along with a candy wrapper, were found in the septic field. I find support for this with the landlord's photographic evidence and the landlord's repair companies' statements.

Interestingly, the tenants did not dispute flushing the candy wrapper or the wipe found in November 2019 and tenant KR confirmed seeing the items.

I also did not find the tenants' report from a company they hired in December 2019, to be compelling or persuasive. The maker of the report acknowledged they were not present when the pump-outs or other maintenance occurred and could not confirm when an additional suite went into the home. The report in part relies upon information given to them by the tenants.

When considering the consistent and forthright testimony of the landlord, their documentary evidence clearly showing that wipes do harm and damage to the septic system, and the inconsistent testimony of the tenants, I find that the landlord on a balance of probabilities submitted sufficient evidence to show that he had cause to end this tenancy.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant or a person permitted on the residential property by the tenants have put the landlord's property at significant risk.

I therefore dismiss the tenants' application requesting cancellation of the Notice, without leave to reapply, as I find the 1 Month Notice valid, supported by the evidence, and therefore, enforceable.

As I have dismissed the tenants' application, I decline to award them recovery of the filing fee.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective **January 31, 2020, at 1:00 p.m.** as the parties confirmed that the tenants paid the monthly rent for the month of January 2020.

The order of possession is included with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are advised that costs of such enforcement, such as bailiff fees, are recoverable from the tenants.

Conclusion

For the reasons stated above, the tenants' application is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective January 31, 2020.

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: January 27, 2020

Residential Tenancy Branch