



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dharma Realm Buddhist
Association and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes CNC, OLC, LRE, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- recovery of the filing fee.

The tenants and the landlord's agents (landlord) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenants confirmed receiving the landlord's evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter-

I have determined, and the tenants were informed, that the portion of the tenants' application dealing with a request for an order for the landlord's compliance and for an order suspending or setting conditions on the landlord's right to enter the rental unit is unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and the hearing proceeded on the tenants' request to cancel the Notice. That portion of the tenants' application for an order for the landlord's compliance and for an order suspending or setting conditions on the landlord's right to enter the rental unit is dismissed, with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice and to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's and tenant's claim and my findings around it are set out below.

The evidence shows that this tenancy began on April 1, 2018, with a fixed term clause extending the tenancy to March 31, 2020. Monthly rent is \$1,900 and the tenants paid a security deposit of \$950.

The written tenancy agreement was submitted into evidence. The only listed tenant is LH. LH said that she is not a tenant as she does not live at the rental unit and only signed the agreement on behalf of her daughter and son-in-law, the other tenants here, FF and LB.

FF said that it is clear that the written tenancy agreement contemplated he and LB as tenants, as shown by the language in the detailed, 10-page addendum. The addendum was also submitted into evidence by the landlord. FF pointed to clause 61 in the

addendum showing a five-year tenancy was agreed upon, with he and LB as the tenants.

The One Month Notice to End Tenancy for Cause which is the subject of this application, was dated December 7, 2019, for an effective move out date of January 31, 2020. The landlord submitted that they served the Notice to LH by registered mail and the tenant submitted that she received the Notice on December 12, 2019.

The landlord submitted that they served another Notice to end the tenancy on December 20, 2019, listing the same causes, but with the additional listing of the Details of Cause on the second page of the Notice.

The cause listed on the Notice, submitted into evidence by the tenants, alleged that the tenants or a person permitted on the property by the tenants have engaged in illegal activity that has, or is likely to adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant and jeopardized a lawful right or interest of another occupant or the landlord.

It is noted that when reviewing the evidence of the landlord prior to the hearing, there was no evidence submitted which demonstrated what the illegal activity was.

I therefore queried the landlord, who ultimately could not point to a serious or otherwise violation of federal, provincial or municipal bylaw. The landlord confirmed that there was no breach of a law by the tenant, FF, or LB.

The landlord said they mis-understood this portion of the Notice and would be serving another Notice shortly.

Due to this confirmation, I determined it was not necessary to hear any further evidence from the landlord to support their Notice or any responsive testimony from the tenants.

Before concluding the hearing, FF began speaking about the actions of the landlord's agents. FF said that the landlord has locked and blocked the door in their rental unit which provides access to the breakers and the water filtration system. FF said the municipal officer has ordered the landlord to not lock this door; however, FF has not been able to obtain a copy of this order from the municipality due to the privacy concerns.

The tenants have submitted that the landlord walks around the residential property, taking video recordings and coming into the house with other people.

The landlord also said in the hearing, by way of informing the tenants, that the tenancy ends on March 31, 2020, the end of the fixed term in the tenancy agreement.

The landlord also said that the only tenant was LH, and there is no tenancy agreement with FF or LB.

Analysis

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.

In this case, it was not clear that the tenants amended their application to include a request for cancellation of the second Notice listing the same causes.

I found it appropriate to amend the tenants' application seeking cancellation of both Notices and I have therefore considered both the Notice of December 7 and December 20, 2019.

I have reviewed Residential Tenancy Policy Guideline 32, which shows that an illegal activity would include a serious violation of federal, provincial or municipal bylaw. The party alleging the illegal activity, the landlord here, has the burden of proving that the activity was illegal.

In the case before me, the landlord confirmed that the tenants have not breached or violated any federal, provincial, or municipal bylaw.

I therefore find the landlord has submitted insufficient evidence to support their Notices that the tenants have engaged in any illegal activities.

Therefore, I grant the tenants' application for Dispute Resolution and order the One Month Notices issued December 7, 2019 and December 20, 2019, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

I advise the landlord that the written tenancy agreement did not require the tenants to vacate the rental unit at the end of the fixed term. Additionally, even if that were the case, Residential Policy Regulation 13.1 allows for a provision requiring the tenants to

vacate the rental unit at the end of the fixed term only in limited circumstances, either that the landlord or a close family member intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit.

I find it necessary to inform the landlord that this tenancy, beginning April 1, 2020, will now be a month to month tenancy, and is no longer a fixed term tenancy.

As noted, I have dismissed the portion of the tenants' application for orders for the landlord's compliance and an order suspending or setting conditions on the landlord's right to enter the rental unit or site.

I, however, find it necessary to provide information to the landlord. Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord.

In this case, as I did not allow a full hearing on the other matters raised in the tenants' application or responsive evidence from the landlord as to the tenants' allegations, I did not determine that the landlord has breached or failed to provide the tenants with their rights to quiet enjoyment.

The tenants are granted leave to reapply for orders for the landlord and due to this, I must advise the landlord that interfering with a tenants' right to quiet enjoyment could result in the tenants being successful in future applications where they may seek compensation for a loss of quiet enjoyment and a devaluation of the tenancy.

If the landlord would like to review their legal obligations, the landlord may want to consult with staff at the Residential Tenancy Branch if they have questions about their legal obligation.

The tenants have succeeded with their application; therefore, I award recovery of the \$100 filing fee, pursuant to section 72(1) of the Act.

I authorize the tenants to deduct \$100 from a future monthly rent payment, to satisfy their monetary award. They should be advised the landlord when they make this deduction and the landlord may not serve the tenants a 10 Day Notice to End Tenancy for Unpaid Rent when the tenants make the \$100 authorized deduction.

Conclusion

The tenants' application has been granted as I have ordered that the landlord's One Month Notices to End Tenancy for Cause, dated December 7, 2019 and December 20, 2019, be cancelled.

That portion of the tenants' application for an order for the landlord's compliance and for an order suspending or setting conditions on the landlord's right to enter the rental unit is dismissed, with 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: March 13, 2020

Residential Tenancy Branch