



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on January 15, 2020, wherein the Tenants sought to cancel a 1 Month Notice to End Tenancy for Cause issued on January 2, 2020 (the "Notice").

The hearing of the Tenants Application was scheduled for 9:30 a.m. on March 16, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

Preliminary Matter

The Tenants incorrectly spelled the Tenant, K.L.'s name on the Application. Additionally, they included the owner on the Application. Section 64(3)(c) allows me to correct a Notice of Application. Accordingly, I amend the Tenants' Application to correctly spell the Tenant, K.L.'s, name and to remove the owner, B.T. as Respondent.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord presented their evidence first.

The Landlord's Property Manager testified as follows. He confirmed that the tenancy began before he began his current position. The most recent tenancy agreement indicated that this tenancy began May 1, 2018.

The Details of Cause noted on the Notice were as follows:

“Breach of a material term of the tenancy agreement by having a dog (Pitbull or Rottweiler) in the unit as reported by other tenants AND seen during unit inspection on November 26, 2019.”

The Property Manager indicated that the dog has since been removed and confirmed that was why there is no evidence relating to the dog. The dog was removed as of February 7, 2020.

Documentary evidence submitted by the Landlord indicate the Landlord issued letters to the Tenants relating to a cockroach infestation, the Tenants applying duct tape to the electrical breaker panel and the condition of the rental unit. The Tenants were not informed of these issues on the Notice.

For reasons which will be made clear in the analysis portion of my Decision, I did not require testimony from the Tenants.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy. Section 47(3) provides that a 1 Month Notice must comply with section 52 of the *Act*.

Section 52 of the *Act* provides as follows:

- (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, and
- (e) when given by a landlord, be in the approved form.

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb33.pdf>

DETAILS OF CAUSE(S): Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them, the opportunity to review and respond to any evidence which is to be relied upon by the claiming party, and to be present at any hearings dealing with the issues so that they may meaningfully respond to the allegations made against them.

A landlord seeking to end a tenancy for cause, is required to give the tenant details of the cause on the notice to end tenancy so that the tenant knows the reasons the landlord wishes to end their tenancy and is able to respond to the specific allegations.

In this case, the Landlord indicated that the issue giving rise to the Notice, namely the presence of a dog, had been resolved.

This is clearly a problematic tenancy based on the other evidence provided by the Landlord. However, although the Landlord submitted additional evidence relating to other issues arising during the tenancy, those issues were not indicated on the Notice. Consequently the Tenants would not have been given proper notice that they were expected to respond to these other issues. In the same way a landlord cannot issue a notice for cause and then try to end the tenancy for non-payment of rent at the hearing, a landlord cannot give a tenant notice of one reason for ending the tenancy, only to attempt at the hearing to end the tenancy for other reasons for which the tenant was not properly informed.

For these reasons the Tenants' request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

The Notice is cancelled.

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 16, 2020

Residential Tenancy Branch