



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on March 11, 2020.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice. The balance of the tenants’ applications is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began in 2012. The parties have entered into multiple fixed term tenancy agreements. The current fixed term tenancy agreement commenced on January 1, 2020 and expires on March 31, 2020. Current rent in the amount of \$3,229.00 was payable on the first of each month. The tenants paid a security deposit of \$1,425.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on April 30, 2020.

The reason stated in the Notice was that the tenants have:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the material term of the tenancy agreement is clause 16, which is as follows:

- Items can be stored in the garage, in away which complies with Vancouver Fire Services Regulations, see item 15, however sufficient free space should be kept, at all times, to park 2 average size cars.

At the outset of the hearing, the tenants do not disagree that the garage is in the state that is shown in the photographs. The photographs show that the garage is stack with boxes from the ground to the ceiling and there is no space whatsoever, for any other items. To describe in a better way, this appears to be a case of hoarding, although neither party used that word.

The female tenant testified that they have not been able to rectify the problem because they have been having a difficult time. That she is the caregiver for their blind husband, work 50 hours a week and have a child at home.

The advocate for the tenants stated although they agree the garage is not in compliance with the tenancy agreement; however, they do not believe this is a material term. The advocate stated that this has been an ongoing issue through out the tenancy, and they believe the legal term of estoppel must be applied.

The landlords testified that this was not an original term of the tenancy agreement when the tenancy commenced in 2012. The landlord stated that the issue of the rental unit and the garage have been an issue for an extended period of time, which also involved the fire department. The landlord stated that clause 16 was not in the original fixed term tenancy agreements. The landlord stated that they would only enter into a new fixed tenancy in 2018, with the added clause as the condition of the garage was getting worse and was a serious concern to them. The landlord stated that the tenant promised they would rectify the problem and they signed the agreement.

The landlord testified that they have only allowed this matter to carry on because they were working with the tenants to preserve their tenancy. The landlord stated that they have given the tenants breach letters and they would give the tenants an extension of time when it was requested due to their personal circumstance. The landlord stated that they gave the tenants their final warning on December 23, 2019, that the problem must be rectified by January 22, 2020. The landlord stated that the tenants have made no effort to rectify the problem and they can no longer continue the tenancy.

Filed in evidence are photographs, breach letters and correspondence between the parties.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

There was no dispute over the condition of the garage. While I accept the female tenant is overwhelmed with personal responsibility and has not complied with the warning letters; however, there has been no efforts to comply.

I find this issue has been ongoing for an unreasonable time, and it is the tenants' responsibility to seek help when they know they do not have the ability to rectify the problem on their own. I find the tenants have breached their tenancy agreement.

The argument that I must consider is whether if this is a matter term of the tenancy or if estoppel should be applied.

Estoppel is defined in the Merriam-Webster dictionary as follows:

- a legal bar to alleging or denying a fact because of one's own previous actions or words to the contrary

In this case, there has been many issues regarding this tenancy, which more likely than not is related to hoarding both within the rental unit and the garage. The photographs support that this is not a simple issue of normal household clutter.

The landlord has been working with the tenants to rectify this problem of excessive clutter in the garage. There has been extensive conversation, emails, and letters. The tenants were given extension for compliance which were for their benefit due to their personal circumstance.

I do not find the law of estoppel applies. The landlords cannot be “estop” simple because they were working with the tenants on this issue, which was for the tenants benefit. The landlord was not going back on any promises and was not silent on this issue. Rather, I find the tenants were seeking extensions and not fulfilling their obligations to rectify the problem, which left the landlord no other option except to end the tenancy.

I find this was a material term of the tenancy. The tenant did not comply with the final warning issued on December 23, 2019 to rectify the problem by January 22, 2020 and there has been no compliance since.

I find the Notice has been proven by the landlords and is valid and enforceable. Therefore, I dismiss the tenants’ application to cancel the Notice. The tenancy will end on April 30, 2020, in accordance with the Act.

Since I have dismissed the tenants’ application, I find that the landlords are entitled to an order of possession effective April 30, 2020, **at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain

Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

Conclusion

The tenants' application to cancel the Notice, is dismissed. The landlords are granted an order of possession.

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: April 22, 2020

Residential Tenancy Branch