



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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).

The tenant and the listed landlords attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

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.

Preliminary and Procedural Matters-

After a review of the evidence prior to the hearing, I determined that an additional issue for consideration was whether I had jurisdiction over this dispute. The parties were informed this matter would be addressed and then following, the matter of the landlord's Notice would be dealt with in the hearing.

As another preliminary matter, the landlord, BM, denied receiving the tenant's evidence, which the tenant said he attached to BM's door. That evidence was in a USB port and the tenant did not confirm with the landlord that it had been received.

The tenant confirmed receiving the landlord's evidence.

Rule 3.10.5 states that before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

I decided to continue the hearing without consideration of the tenant's digital evidence as the tenant failed to contact the landlord to ensure they had playback equipment.

The hearing proceeded on the parties' affirmed testimony and the landlord's documentary evidence.

On another preliminary matter, the tenant said the other tenant listed was his 17 year-old son, who was not present and who had a brain injury, according to the tenant. I have therefore excluded that listed tenant from any further consideration in these matters.

Finally, BM said that SR, who was beside him during the hearing, was deaf and he would be speaking for SR in the hearing.

Issue(s) to be Decided

Does the Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, has the landlord submitted sufficient evidence to support the Notice issued to the tenants?

Background and Evidence

Jurisdiction –

The listed landlord, BM, testified that he was the leaseholder for the residential property, which he rented from the owner, SR. BM testified that he began his tenancy with SR on April 20, 2020, for a fixed term through May 2021. BM rents the upper level and according to BM, SR said he wanted BM to find other tenants for the basement level.

The tenancy agreement between SR and BM was not filed into evidence.

BM submitted he advertised the rental unit, resulting in this tenant moving into the basement suite on June 1, 2020. BM confirmed that there was no written tenancy agreement with the tenant, as he, the tenant, said they would wait and see what happens. BM said the tenant paid his first month's rent to him.

BM confirmed that the owner, SR, wanted him to act in the capacity of a property manager.

In response, the tenant said he came into the tenancy with the understanding that SR was the landlord, as he initially met with SR and that BM said he could move-in.

The tenant said as far as he knew, he was a tenant of SR and he paid him the first month's rent. Additionally, he paid one deposit to BM and one deposit to SR.

As to the tenancy details, BM said that his monthly rent was \$1,200, that he would have access to and use of one-half of the backyard, and he served a copy of the dispute resolution package to both listed respondents.

During the hearing, a discussion of a settlement of the issues was discussed. The tenant put forth a potential, but not definite offer, of a possible move-out date. BM, who represented SR, said that SR did not agree to the offer.

Notice to end the tenancy –

Pursuant to the Rules, the landlord/respondent, BM, proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated July 3, 2020, was served to the tenant by personal service, according to BM, and listed an effective end of tenancy of July 31, 2020. Both parties submitted a copy of the Notice. The Notice listed SR as landlord.

The causes listed on the Notice alleged that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and a security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement. The Notice listed that it was the pet damage deposit that was not paid.

The documentary evidence provided by BM states that he informed the tenant prior to moving in the basement unit that he had been diagnosed with Major Depressive Disorder with Anxiety and there would be many conditions for the tenancy, more than contained in a normal tenancy agreement.

BM submitted that he thought the tenant and his girlfriend were married, but that turned out not to be the case, and in addition, the tenant's son moved in along with multiple dogs. BM said this was important as he had told SR that a husband, wife and one dog were moving in.

In support of the Notice, BM testified that the tenant and his girlfriend engaged in three acts of domestic violence, on two different nights, June 5 and June 27, 2020, which has impacted his mental health. BM submitted that he hears everything between the tenant and his girlfriend, due to his living room being right above them.

When he informed SR about the domestic disputes, SR told BM to evict the tenants. BM said that initially he was unable to seek eviction due to the Covid-19 eviction restrictions.

BM submitted that the tenants' behaviour, such as the use of loud and vulgar language has triggered mass anxiety and loss of sleep. BM said SR continued to tell him to evict the tenants.

Tenant's response –

The tenant said that there have been no domestic disputes between him and his girlfriend. The tenant claimed that BM has gotten drunk multiple times.

The tenant said that BM is on a path to evict them and has set up a homeless camp outside the premises, and then, moved them into the garage. The tenant said that he approached SR, who told him to talk to BM about that situation. The tenant said that SR does not want to get involved with their tenancy.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Jurisdiction –

Section 62 (2) of the Act stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the Act as follows:

The Residential Tenancy Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

In this case, there was no written tenancy agreement submitted for my consideration, either the one between BM and SR or the one between the tenant and a landlord. As I could not review the tenancy agreement between BM and SR, I could not determine if BM rented the entire home, with the intention to sublet the basement.

The Notice was issued with SR, the owner, listed as the landlord, SR appeared at the hearing and guided the responses of BM, making the decision not to settle this matter. Further, the tenant said he initially met with SR in discussions of the tenancy and paid SR the first month's rent.

The monthly rent was established at \$1,200 and a security deposit of \$600 was paid.

Overall, I find this evidence, on a balance of probabilities, shows that the tenancy in question here was between the tenant and SR, the owner. As a result, I do not find there to be a sub-tenancy agreement between BM and the tenant and find I have jurisdiction over this dispute. I find BM in relation to this tenancy is a property manager.

Notice to end the tenancy –

In an application to cancel a One Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. The Notice here set out that it was being given as the tenant or person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and a security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

In this case, as discussed, there was no written tenancy agreement. I could therefore not determine whether the tenant was required to pay a pet damage deposit, the issue in question here. I find the landlord submitted insufficient evidence to support this cause listed on the Notice.

As to the second cause, Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a One Month Notice in cases where a tenant or 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.

In this case, the evidence consisted of the disputed testimony of BM and the tenant, along with the written statement of the upstairs occupant, BM, incorporating his testimony, which was also disputed by the tenant.

There was no evidence of any investigation of reported problems by the landlord/owner, SR, in the recent past, no letters of warning issued to the tenant or any other evidence that the landlord had received valid complaints in relation to the tenant.

I find it is a landlord's responsibility to ensure the rights of quiet enjoyment of all tenants and in this case, the evidence shows SR did not intervene or investigate the complaints BM had with the tenant.

The landlord or BM did not have independent evidence of violent domestic disputes, such as a police report, and there was no evidence that the police had been called to the premises.

Overall, I find the landlord submitted insufficient evidence that the tenant's actions rose to the level of significant interference with or unreasonable disturbance of another occupant or the landlord of the residential property.

On the basis of the landlord's insufficient evidence, there is no basis to lawfully end this tenancy. The One Month Notice dated July 3, 2020, is cancelled.

Conclusion

The tenant's application to cancel the One Month Notice is granted. The One Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

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: August 17, 2020

Residential Tenancy Branch