



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence. Both parties confirmed the landlord served the tenants with the submitted documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed of both parties and find that both parties have been sufficiently served.

At the outset, the tenants' application was clarified. The tenants stated they seek an order cancelling the landlord's 1 month notice to end tenancy for cause; an order for the landlord to comply/to suspend or set conditions on the landlords right to enter the rental unit and recovery of the filing fee. The tenants stated that their request for the second and third selections was in response to the landlord failing to provide proper notice of entry of the rental unit. On this issue, both parties were notified that under section 29 of the Act, the landlord must not enter the rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - i) the purpose for entering, which must be reasonable;
 - ii) the date and the time of entry, which must be between 8 a and 9pm unless the tenant otherwise agrees;

The landlord confirmed his understanding and stated that they would comply.

The hearing shall proceed on the tenants request to cancel the 1 month notice and recovery of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenants entitled 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 applicant's claim and my findings are set out below.

This tenancy began on February 1, 2019 on a fixed term tenancy ending on January 31, 2020 and then thereafter on another month-to-month or fixed term as per the submitted copy of the signed tenancy agreement dated January 1, 2019. The monthly rent was \$1,100.00 payable on the 1st day of each month. A security deposit of \$500.00 was paid.

Both parties confirmed that on July 23, 2020, the landlord served the tenant with the 1 Month Notice dated July 23, 2020 in person. The 1 Month Notice sets out an effective end of tenancy date of August 31, 2020 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or

- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The details of cause state:

- 1. The tenants sublet part of their rented area without landlords written consent.*
- 2. The tenants have interfered with property rights of landlord by trespassing onto landlord's property to continually use kitchen and washing machines without landlord consent, and have not stopped after given notice to do so.*
- 3. The tenants have unlawfully using a hot place in their bedroom which causes concern over fire hazard, and damage to property.*

Both parties provided undisputed affirmed testimony that this is a complex issue regarding family members. The tenant, H.D. stated that the landlord is his mother. The landlord's agent is also a son of the landlord. The issues of dispute involve the tenant's grandmother who lives upstairs with the landlord.

The landlord clarified that the for the first reason for cause significantly interfered with or unreasonably disturbed another occupant or the landlord, the landlords claim that the tenants have verbally abused the landlord (their mother) causing the landlord to feel intimidated. The tenants disputed this claim arguing that no such abuse has occurred. The tenants state that the landlord's issue are related to the care of their grandmother. The landlord did not provide any supporting evidence of verbal abuse.

The landlord stated that the second reason for cause seriously jeopardized the health or safety or lawful right of another occupant or the landlord is related the same issue of verbal abuse of the landlord by the tenants. The landlord relies on the same facts as the first reason for cause and has not provided any supporting evidence. This claim is disputed by the tenants.

The landlord stated that the third reason for cause put the landlord's property at significant risk by having and using a hotplate in the basement. The landlord stated that it is not safe to use in the basement. The landlord relies upon a copy an excerpt of a municipal bylaw titled, "Port Coquitlam's Bylaw for Secondary Suites". The landlord referenced "Doors" under the B.C. Building Code Requirements for Secondary Suites under Fire Safety which states in part,

Doors: Where a door exists in a fire separation (ie a door between the secondary suite and the main suite), it must be a solid-core door equipped with a self-closing device. The door must be smoke tight. This can be achieved using weather stripping.
[reproduced as written]

The landlord was unable to provide any clarification on how this section applies to the tenant having a “hotplate” in the basement.

The landlord stated that under the fourth, fifth and sixth reasons for cause selected, the tenant was illegally trespassing; the tenant was using a “hotplate” in the basement; and the tenant was subletting the rental unit. On all these reasons selected for cause, the tenants have disputed that any illegal activity has occurred. The landlord confirmed that at no time have the police been called concerning an illegal trespass; the local fire marshall has not been called to report the “hotplate” nor an fire inspection made; and the landlord confirmed that the signed tenancy agreement does not provide for any restrictions on subletting nor has the landlord provided sufficient evidence to support this claim.

Analysis

In an application to cancel a 1 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.

I accept the undisputed evidence of both parties that the landlord served the tenants with the 1 month notice dated July 23, 2020.

In this case, I find based upon the submissions above listed by the landlord that not one reason for cause has been established. In each case, the tenant has disputed the landlord’s claims and the landlord was unable to provide any supporting evidence to the contrary. On this basis, the tenants’ application is granted and the landlord’s 1 month notice dated July 23, 2020 is cancelled. The tenancy shall continue.

As the tenants have been successful, they are entitled to recovery of the \$100.00 filing fee. I order that the tenants may withhold one-time \$100.00 from the next months rent upon receipt of this decision.

Conclusion

The tenants’ application is granted.

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: September 14, 2020

Residential Tenancy Branch