



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) under the *Residential Tenancy Act* (the Act) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated August 31, 2020 (1 Month Notice) and to recover the cost of the filing fee.

The tenant and an agent for the landlord JS (agent) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The agent confirmed that the landlord did not serve the tenant with any evidence in response to the tenant's application. As a result, the agent was advised that the landlord's full documentary evidence served on the Residential Tenancy Branch (RTB) was being excluded in full as it was not served on the tenant as required by the RTB Rules of Procedure (Rules). The agent confirmed that they were served with the tenant's application and documentary evidence and had the opportunity to review that evidence prior to the hearing. I find the landlord was sufficiently served under the Act based on the above.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing and were advised that the decision would be emailed to both parties.

In addition, the surname of the tenant and the full landlord corporate name were corrected at the outset of the hearing, pursuant to section 64(3)(c) of the Act.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence for my consideration. The fixed-term tenancy began on October 1, 2019 and reverted to a month to month tenancy as of January 1, 2020. Monthly rent is \$800.00 and is due on the first day of each month.

The tenant did not dispute that they were served with the 1 Month Notice on August 31, 2020 and filed to dispute the 1 Month Notice on September 10, 2020. The effective vacancy date is listed as September 30, 2020.

On the 1 Month Notice, the landlord has alleged 4 causes, namely:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

As the landlord's documentary evidence was excluded in full as it was not served on the tenant, I have reviewed the Details of Dispute portion of the 1 Month Notice, which alleges the following:

MULTIPLE VIOLATIONS OF TENANCY AGREEMENT INCLUDING: SECTION 24A, 24B, & 24E.
EXTENSIVE DOCUMENTATION OF THESE VIOLATIONS. STAFF EFFORTS AND TIME TO ALLOW TENANT TO CORRECT BEHAVIORS WITHOUT POSITIVE RESULT.:EVIDENCE PROVIDED UPON DISPUTE::

The agent stated that the tenant has threatened staff using a baseball bat. The most recent incident was on August 18, 2020 at 6:15 p.m. where CE and K staff members claims the tenant was yelling loudly that KP stole their laundry key and that the tenant became red in the face and said they were "going to smash other tenant with a baseball bat." The tenant denied saying what the agent said and clarified that he said if KP enters their room again the tenant will defend himself with a bat and called himself "batman".

The second incident described by the agent was back in February 3, 2020, which is six months prior to the 1 Month Notice being issued. The agent claims the tenant threatened staff by stating they were "going back to suite to get a bat to take care of the issue". The tenant denied saying what the agent said and clarified that they thought a bike was given to him and denies ever having used a bat to assault anyone and that the tenant uses a cane or walker to assist with walking.

The agent confirmed that the police have attended but have never charged the tenant with a crime. The parties confirmed that the tenant has paid for use and occupancy of the rental unit for October 2020.

Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of September 30, 2020. The tenant disputed the 1 Month Notice on September 10, 2020, which is within the 10-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice. An allegation without supporting evidence to support that allegation, such as witness testimony or a statement from a witness is not sufficient evidence to prove a 1 Month Notice, especially when a tenant disputes the reason alleged on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted documentary evidence that supports the incident reports described by the agent.

The parties were also advised that I find the Details of Cause to be vague and were missing specific dates, time and details of what the tenant has alleged to have done and

without specific details, I find the tenant is placed in a position where they would not know the details of the 1 Month Notice until the hearing, which is not a fair process for the tenant and that the tenant has the right to know the details of the 1 Month Notice so they can arrange rebuttal evidence in response to the allegations by the landlord. In fact, the 1 Month Notice states the following in the Details of Cause section:

Detail of Cause(s): Describe what, where and who caused the issue and include date/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

In addition, 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 the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find the landlord has provided insufficient evidence to prove that the 1 Month Notice dated August 31, 2020 is valid. Therefore, I **cancel** the 1 Month Notice dated August 31, 2020 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant the recovery of the \$100.00 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. This order is made pursuant to section 67, 72 and 62(3) of the Act.

Conclusion

The 1 Month Notice issued by the landlord dated August 31, 2020 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The tenant has been authorized a one-time rent reduction in the amount of \$100.00 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

The decision will be emailed to both parties as confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 6, 2020

Residential Tenancy Branch