



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the building manager (the "manager") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was served with the tenant's application for dispute resolution via registered mail. I find that the tenant's application was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and manager's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2012 and is currently ongoing. Monthly rent in the amount of \$1,265.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on September 1, 2020 an occupant of the subject rental property was personally served with a One Month Notice to End Tenancy for Cause with an effective date of October 2, 2020 (the "One Month Notice"). The tenant confirmed receipt of the One Month Notice on September 1, 2020.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a 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.
- 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;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The One Month Notice served on the tenant is an outdated Residential Tenancy Branch form from 2011. The 2011 form does not contain a "Details of Cause" section which the current 2020 form provides. The "Details of Cause" section on the 2020 form states: "Describe what, where and who caused the issue and include dates/times, names etc.

This information is required. An arbitrator may cancel the notice if details are not provided.”

The manager testified that the tenant was served with the One Month Notice because he sublets the subject rental property to other tenants without the consent of the landlord. The manager testified that he is an on-site building manager and that he only sees the tenant at the end or beginning of the month, around when rent is due.

The tenant testified that he lives at the subject rental property full time and has had a number of different room mates at the subject rental property over the course of his tenancy.

The landlord testified that section 22 of the tenancy agreement prohibits anyone other than the tenant from residing at the subject rental property. The landlord did not enter the tenancy agreement into evidence. The tenant only entered into evidence sections 1-7 and 34-40 of the tenancy agreement.

The tenant testified that the landlord has always permitted him to have roommates in the past and should not be able to enforce such a clause after eight years of permitting roommates.

The landlord testified that the tenant had international occupants staying at the subject rental property who did not quarantine on their arrival as required during COVID 19. The tenant testified that his international roommates arrived on March 1, 2020, prior to the initiation of COVID quarantine requirements.

The landlord entered into evidence three warning/breach letters:

1. July 4, 2018- warning that renting the subject rental property on Airbnb is a breach of the tenancy agreement.
2. July 27, 2018- warning that renting the subject rental property on Airbnb is a
3. April 8, 2020- breach letter stating that the tenant has allowed temporary international visitors to reside at the subject rental property and that those visitors have not quarantined.

Analysis

Section 47 of the *Act* states:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b)the tenant is repeatedly late paying rent;
- (c)there are an unreasonable number of occupants in a rental unit;
- (d)the tenant or a person permitted on the residential property by the tenant has

- (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

- (iii)put the landlord's property at significant risk;

- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i)has caused or is likely to cause damage to the landlord's property,

- (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

- (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- (f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

- (g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

- (h)the tenant

- (i)has failed to comply with a material term, and

- (ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;
 - (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
 - (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
 - (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;
 - (ii) the date specified in the order for the tenant to comply with the order.
- (2) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

- (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,
- (d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e)when given by a landlord, be in the approved form.

I find that the One Month Notice was not in the approved form, contrary to section 52(e) of the *Act* because the form was nine years outdated and did not have a “Details of Cause” section. I therefore find the One Month Notice invalid, and of no force or effect.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not proved any of the grounds for eviction found in the One Month Notice. I find that the landlord has not proved, on a balance of probabilities, that the tenant does not reside at the subject rental property. I find that the landlord has not proved, on a balance of probabilities, that the tenant’s roommates breached any quarantine restrictions. I find that the landlord has not proved that the tenant broke any laws or put anyone’s health or safety in jeopardy.

I find that the landlord did not provide the section of the tenancy agreement that the landlord intended to rely on to prove that the tenant breached the tenancy agreement. Without the relevant portion of the tenancy agreement before me, I cannot conclude that the tenant breached it.

I find that the landlord has not proved that the tenant has put the landlord's property at risk.

The manager did not make any submissions on why the number of occupants at the subject rental property is unreasonable. I therefore find that the landlord has not proved that the number of occupants at the subject rental property is unreasonable.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 47 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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: October 29, 2020

Residential Tenancy Branch