



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Royal Hotel Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement; and
- recovery of the filing fee.

The tenant and the landlord's agents attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all 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 –

Evidence -

The tenant submitted a significant amount of evidence shortly before the hearing, received by the Residential Tenancy Branch (RTB) one and two days before the hearing, as well as the day of the hearing.

Landlord AC said they had not received any additional evidence and very little original evidence.

The tenant said he sent the additional evidence by registered mail on December 8, 2020.

I find this additional evidence was not served in compliance with sections 3.13 and 3.14 of the Rules, as it was not served on the landlord at least 14 days prior to the hearing. Under section 90 of the Act, documents sent by registered mail are deemed served 5 days after mailing, or in this case, the landlord would have been deemed served on December 13, 2020. Nonetheless, the landlord denied receiving it and there was no proof to the contrary, such as a tracking history from Canada Post.

I have therefore not reviewed or considered this evidence, as it has been excluded.

The tenant confirmed receiving the landlord's evidence.

Additional issues in the application –

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the Notice. I find that not all the additional claim on the application is sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application will be determined within this Decision.

Issue(s) to be Decided

Has the landlord met the burden of proof to uphold the Notice?

Is the tenant entitled to recovery of his filing fee paid for this application?

Background and Evidence

The residential property is listed as a hotel, with 12 rental rooms and commercial space on the main floor, according to the landlord AC. The building was approximately 111 years old.

The tenant submitted that he began a tenancy on September 14, 2019, for a monthly rent of \$400. The tenant submitted further that he moved to another rental unit and is currently paying monthly rent of \$500. The tenant also asserted that he was never provided a written tenancy agreement.

The subject of this dispute is the One Month Notice to End Tenancy for Cause issued to the tenant. The Notice was dated September 28, 2020 and listed an effective move-out date of November 1, 2020. Both parties filed into evidence copies of the Notice.

The cause listed on the Notice was:

- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property.

The landlord submitted a signed and witnessed statement that the Notice was slipped under the tenant's door on October 1, 2020. The tenant, in his application, said that he received the Notice on September 30, 2020.

Pursuant to Rule 6.6 and 7.18, the landlord's agent AC proceeded first in the hearing to support the Notice.

In support of the Notice, AC said that the tenant has a cannabis grow-op that he started on the roof of the residential property, to which he had no legal right to access, and when he was warned about the grow-op, he removed the plants to an inside room to which he had no legal access, to dry the plants.

AC said that the tenant put a padlock on the door, which prevented anyone from going into the room.

AC said that the tenant ran a hose from the residential property to the roof to water the plants, in essence, stealing water from the landlord.

AC was unable to provide a specific number of plants the tenant had, but he estimated that early on, he had 4-6 plants.

AC also said that the tenant moved into another room, without permission from the landlord. AC said that they gave the tenant a verbal warning about the plants, and he did not remove them.

In response to my inquiry, AC said he and his partners, who live in another province, have bought the property, and do not live near the residential property. AC said they had a caretaker in charge of the property.

The landlord's relevant evidence included pictures of the cannabis plants, a picture of the cannabis in the room not rented by the tenant and a picture of the door to that room.

Tenant's relevant response –

The tenant said he had a legal amount of cannabis plants and the landlord knew about them in early to mid-June 2020, when the owners visited the property. The tenant denied the landlords gave him a verbal warning.

The tenant submitted that he ran the water hose from the laundry room, and thus had the legal right to the water. The tenant said that he put the plants in a common bathroom and ran the exhaust fan at low levels.

The tenant submitted that the padlock was installed with screws and it only had to be unscrewed to access the room.

The tenant submitted that no one ever had a problem with his cannabis plants and he had a medical permit to own and use cannabis.

The tenant denied doing anything illegal.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act, and I find that it was served upon the tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Section 47(1)(e)(i) of the Act authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property.

I find the growing of the cannabis plants was not in and of itself demonstrative of causing damage to the landlord's property. I make no determination of whether the cannabis plant growing was in fact illegal, as a person is allowed to possess a certain number of cannabis plants currently. I, however, was not provided sufficient information by the landlord to prove whether the growing of cannabis plants away from a person's own residence was illegal.

However, as to other alleged illegal activities, I find trespassing is commonly understood to occur when a person goes onto property to which they have no legal rights or consent to enter.

Here, I find the evidence supports that the tenant illegally trespassed when he took over at least a portion of the roof of the residential property, which is not a common area, taking over and restricting access by locking a room in the residential property of which he had no authority, and using power for the exhaust fan and water for which he had not paid.

As to whether the illegal activity caused damage to the property, I find that it did. The tenant acknowledged that he installed a padlock, using screws, to the doorframe to the room to which he had no authority to take over and which prevented access by the landlord. I find this amounted to damage to the landlord's property.

Additionally, I find the landlord had a potential legal liability had something happened to the tenant when was on the roof of the building without legal authority,

Finally, the tenant also confirmed that he ran the exhaust fan inside the room, to dry the cannabis, which could create a fire danger to the landlord's property.

I therefore find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant or a person permitted on the residential property by the

tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property.

Conclusion

I dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice valid, supported by the landlord's evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective **two (2) days after service on the tenant.**

The order of possession is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

As the tenancy is ending, I **dismiss** the remainder of the tenant's application, without leave to reapply, as those issues relate to an ongoing tenancy.

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: December 23, 2020

Residential Tenancy Branch