



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, DRI, MNDCT, OLC, LRE, FFT

Introduction

This hearing was convened in response to two Applications for Dispute Resolution filed by the Tenant.

On October 14, 2020 the Tenant filed an Application for Dispute Resolution in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; to dispute a rent increase; and to recover the fee for filing the Application for Dispute Resolution.

The Tenant stated that on October 23, 2020 he personally served the Landlord with the Dispute Resolution package and all the evidence he submitted to the Residential Tenancy Branch in October of 2020. The Landlord acknowledged receiving these documents and this evidence was accepted as evidence for these proceedings.

On November 12, 2020 the Tenant filed a second Application for Dispute Resolution in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and to recover the fee for filing the Application for Dispute Resolution.

The Tenant stated that on November 17, 2020 he personally served an agent for the Landlord with the second Dispute Resolution package and all the evidence he submitted to the Residential Tenancy Branch in in November of 2020. The Landlord acknowledged receiving these documents and this evidence was accepted as evidence for these proceedings.

In December of 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on December 17, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 13, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord initially stated that he did not know how his evidence was served to the Tenant. He subsequently stated that he assumed he served the evidence to the Tenant personally. He stated that he does not recall when he served the evidence to the Tenant, although he thinks it is likely that he served it to the Tenant on the same day he submitted it to the Residential Tenancy Branch. The Tenant stated that the Landlord has not served him with evidence for these proceedings.

I find the Landlord has submitted insufficient evidence to convince me that he served his evidence to the Tenant. I find his testimony that he personally served it to the Tenant is unreliable, as he was clearly uncertain about the details of service. As the Tenant did not acknowledge receiving this evidence and the Landlord has submitted insufficient evidence to establish it was served, I declined to accept the Landlord's evidence. At the conclusion of the hearing the Landlord was asked if he would like to request an adjournment for the purposes of re-serving his evidence, and he replied that he did not want an adjournment.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The Tenant has identified several issues in dispute on the Applications for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I find the most urgent issue in dispute at these proceedings is possession of the rental unit. I will therefore consider the application to cancel the two One Month Notices to End Tenancy for Cause which are the subject of these proceedings. I will also consider the applications to recover the fees for filing these two Applications for Dispute Resolution.

All the other matters in the Applications for Dispute Resolution are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should either of the two One Month Notices to End Tenancy for Cause, which were served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2012 and that rent is due by the first day of each month.

The Tenant submitted a One Month Notice to End Tenancy for Cause, dated October 05, 2020, which declared that the rental unit must be vacated by January 30, 2020. The Landlord stated that his intent was to end the tenancy by January 30, 2021. This One Month Notice to End Tenancy for Cause declared that the tenancy was ending because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has put the Landlord's property at significant risk; and that the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.

The Landlord initially stated that he posted the October 05, 2020 Notice to End Tenancy to the Tenant on the Tenant's door on October 06, 2020. The Landlord subsequently stated that he posted the October 05, 2020 Notice to End Tenancy to the Tenant on the Tenant's door on November 10, 2020. When asked to clarify the date of service the Landlord confirmed that the Notice to End Tenancy was posted on November 10, 2020.

The Tenant initially stated that he located the October 05, 2020 Notice to End Tenancy to the Tenant on his door on November 06, 2020. The Tenant subsequently stated that he located the October 05, 2020 Notice to End Tenancy to the Tenant on his door on November 07, 2020. When asked to clarify the date of receipt the Tenant confirmed that the Notice to End Tenancy was received on November 07, 2020. He stated that when he located the Notice to End Tenancy, he observed that it was dated October 05, 2020.

The Tenant submitted a second One Month Notice to End Tenancy for Cause, dated October 06, 2020, which declared that the rental unit must be vacated by December 30,

2020. This One Month Notice to End Tenancy for Cause declared that the tenancy was ending because the Tenant had assigned or sublet the rental unit without the written consent of the Landlord.

The Landlord initially stated that he posted the October 06, 2020 Notice to End Tenancy to the Tenant on the Tenant's door on October 06, 2020. The Landlord subsequently stated that he posted the October 06, 2020 Notice to End Tenancy to the Tenant on the Tenant's door on November 10, 2020. When asked to clarify the date of service the Landlord confirmed that the Notice to End Tenancy was posted on November 10, 2020.

The Tenant stated that he located the October 06, 2020 Notice to End Tenancy to the Tenant on his door on November 08, 2020. He stated that when he located the Notice to End Tenancy, he observed that it was dated October 06, 2020.

In support of the October 05, 2020 Notice to End Tenancy the Landlord declared that:

- He inspected the rental unit in 2018 and found it to be extremely dirty;
- He gave the Tenant notice that the unit needed to be cleaned;
- He inspected the rental unit again in 2018 and determined that sufficient cleaning had occurred;
- He inspected the rental unit again in March of 2020 and found it to be extremely dirty;
- He again gave the Tenant notice that the rental unit need to be cleaned but it was not sufficiently cleaned;
- The rental unit is a "rodent infestation waiting to happen";
- There has not been a rodent or insect infestation in the rental unit;
- He is concerned that if the unit is not properly cleaned the floor and counters will be damaged beyond repair;
- There was a flood in the unit in October or November of 2020;
- He believes the flood occurred when a young child left a tap running while an adult who was living in the unit was sleeping;
- The water flowed from the rental unit into the laundry room in the basement of the residential complex;
- He spent \$300.00 repairing the fire sensors that were damaged by the flood;
- He still needs to repair drywall and some flooring, which he estimates will cost between \$800.00 and \$900.00; and
- He has not asked the Tenant to pay for those repairs.

In response to the October 05, 2020 Notice to End Tenancy the Tenant declared that:

- The Landlord did not discuss the cleanliness of the unit with him in 2018;
- In December of 2019 the Landlord gave him notice that the unit needed to be cleaned;
- He cleaned the rental unit, although he forgot to remove some cardboard recycling;
- The Landlord inspected the unit in January of 2020 and told him the unit was sufficiently clean;
- There has not been a rodent or insect infestation in the rental unit, although he understands there have been infestations elsewhere in the residential complex;
- The rental unit is not being damaged by his house keeping standards;
- He was staying at his girlfriend's on the date of the reported flood;
- He believes the flood occurred in October of 2020
- When he returned home his roommate told him that the bathroom sink had overflowed;
- His roommate told him that he had been running hot water into the sink in an attempt to improve the drainage, and the sink overflowed when he stepped away for the sink for a brief period of time;
- He saw no evidence of the flood in his rental unit; and
- The Landlord has not asked him to pay for the cost of repairing any flood damage.

The Landlord stated that he submitted photographs of the condition of the rental unit. When he was advised there were no photographs of the condition of the rental unit in his evidence package, he replied that he "might have made a mistake".

In support of the October 06, 2020 Notice to End Tenancy the Landlord stated that the Tenant has allowed an adult male to reside in the rental unit and that there is a clause in the tenancy agreement that prevents a second person from occupying the rental unit without the written consent of the Landlord. The Landlord submits that the Tenant has breached this term of the tenancy agreement by allowing the male to reside in the unit.

In response to the October 06, 2020 Notice to End Tenancy the Tenant stated that:

- A roommate has been living with him since December of 2019;
- The roommate moved out of the unit on November 02, 2020; and
- He lived in the unit with the roommate between December of 2019 and November 02, 2020.

Analysis

Section 47(1) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy for any of the following reasons, by providing proper notice to a tenant.

- 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.

When a landlord wishes to end a tenancy pursuant to section 47 of the *Act*, the landlord bears the burden of proving there are grounds to end the tenancy.

On the basis of the undisputed evidence, I find that the Tenant received the One Month Notice to End Tenancy for Cause, dated October 05, 2020, which declared that the tenancy was ending because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has put the Landlord's property at significant risk; and that the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property. This Notice to End Tenancy give the Tenant notice that the Landlord is ending the tenancy pursuant to sections 47(1)(d)(ii), 47(1)(d)(iii), and 47(1)(e)(i) of the *Act*.

Although I accept that the October 05, 2020 Notice to End Tenancy was received by the Tenant, I find there is insufficient evidence to determine when it was served/received. Although both parties testified that this Notice to End Tenancy was served/received in November of 2020, I find that highly improbable, given that the Tenant applied to cancel this Notice to End Tenancy in October of 2020.

I find that the Landlord has submitted no evidence to show that the Tenant has engaged in illegal activity. I therefore find that the Landlord has failed to establish grounds to end the tenancy pursuant to section 47(1)(e)(i) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that the housekeeping habits of the Tenant place the Landlord's property at significant risk. In reaching this conclusion I was influenced, in part, by the absence of any evidence, such as photographs or similar evidence, that causes me to conclude that the rental unit is being damaged by the Tenant's housekeeping habits. I was further influenced by the undisputed evidence that there has been no rodent or insect infestation in the unit.

I therefore find that the Landlord has failed to establish that the cleanliness of the unit is grounds to end the tenancy pursuant to sections 47(1)(d)(ii) or 47(1)(d)(iii) of the *Act*.

Although I accept the Landlord's submission that there was a flood in the rental unit sometime in October or November of 2020 which was caused by the actions of a guest in the unit, I cannot conclude that the flood is grounds to end the tenancy pursuant to sections 47(1)(d)(ii) or 47(1)(d)(iii) of the *Act*. Given that the damage was the result of an isolated incident and the damage was relatively minor, I find that the incident has not seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and it has not put the Landlord's property at significant risk.

This finding does not negate the Tenant's responsibility to repair damage to the residential complex that is caused by the actions or neglect of his guests.

As the Landlord has failed to establish grounds to end the tenancy pursuant to sections 47(1)(d)(ii), 47(1)(d)(iii), and 47(1)(e)(i) of the *Act*, I grant the Tenant's application to set aside the October 05, 2020 Notice to End Tenancy.

On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, dated October 06, 2020, which declared that the tenancy was ending because the Tenant had assigned or sublet the rental unit without the written consent of the Landlord. This Notice to End Tenancy give the Tenant notice that the Landlord is ending the tenancy pursuant to section 47(1)(i) of the *Act*.

On the basis of the undisputed testimony and in the absence of any evidence to the contrary, I find that the October 06, 2020 Notice to End Tenancy was served to/received by the Tenant sometime between November 08, 2020 and November 10, 2020.

Residential Tenancy Branch Policy Guideline #19 defines an assignment as the "act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord". When a tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement.

Residential Tenancy Branch Policy Guideline #19 suggests that when a rental unit is sublet "the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement. Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. Residential Tenancy Branch Policy Guideline #19 suggests that a sublet "must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental

unit". The guideline further suggests that the "original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant"

On the basis of the undisputed evidence, I find that the Tenant had a roommate living with him in the rental unit for a period of time. As the roommate was living with the Tenant, I find that the Tenant has neither sublet the rental unit nor assigned his tenancy. I therefore find that the Landlord has failed to establish grounds to end the tenancy pursuant to section 47(1)(i) of the *Act*.

As the Landlord has failed to establish grounds to end the tenancy pursuant to sections 47(1)(i) of the *Act*, I grant the Tenant's application to set aside the October 06, 2020 Notice to End Tenancy.

I specifically note that I have not considered the Landlord's submission that the Tenant breached a term of the tenancy agreement by allowing another male to live in the rental unit with him. I have not considered that submission because the Landlord has not given the Tenant notice that he is ending the tenancy on the basis of a breach of a material term of the tenancy agreement (47(1)(h) of the *Act*).

I find that the Tenant's Application for Dispute Resolution that was filed to dispute the October 05, 2020 Notice to End Tenancy has merit. I therefore find that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

I find that the Tenant's Application for Dispute Resolution that was filed to dispute the October 06, 2020 Notice to End Tenancy also has merit. I therefore find that the Tenant is also entitled to recover the fee for filing the second Application for Dispute Resolution.

Conclusion

The October 05, 2020 Notice to End Tenancy and the October 06, 2020 Notice to End Tenancy are both set aside and have no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

I hereby authorize the Tenant, pursuant to section 72 of the *Act*, to reduce one monthly rent payment by \$200.00 in compensation for the fees paid to file these Applications for Dispute Resolution.

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: January 07, 2021

Residential Tenancy Branch