



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC, LRE, LAT, FFT

Introduction

The tenants filed an Application for Dispute Resolution on November 3, 2020 seeking an order to cancel the following notices issued by the landlord:

- the November 2, 2020 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10-Day Notice”); and
- the October 21, 2020 One Month Notice to End Tenancy for Cause (the “One-Month Notice”).

Additionally, they applied for an order that ensures the landlord’s compliance with the legislation and/or the tenancy agreement, a suspension or setting of conditions on their right to enter the rental unit; and authorization to change the locks to the rental unit. They also applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 28, 2021. In this conference call hearing I explained the process and offered each party the opportunity to ask questions.

Preliminary Matters

The tenants provided a written statement to the Residential Tenancy Branch when they submitted their Application on November 3, 2020. This consists of three pages of handwritten material. In the hearing, the tenants stated they did not provide this or any other prepared documentary evidence to the landlord in advance of the hearing. The landlord confirmed they received nothing from the tenants in advance. On this basis, I do not consider the tenants’ three-page statement and it receives no consideration in

this hearing. It was not properly served on the landlord in line with the *Residential Tenancy Branch Rules of Procedure*. I informed the parties of this at the outset of the hearing.

I informed the parties in the hearing that the primary issue is the tenants' Application to cancel each of the two notices to end tenancy. The other three matters claimed by the tenants on their Application are not related to that immediate issue. I dismiss these pieces of the tenants' Application, with leave to reapply.

Issues to be Decided

- Are the tenants entitled to an order that the landlord cancel the 10-Day Notice pursuant to section 46 of the *Act*?
- Are the tenants entitled to an order that the landlord cancel the One-Month Notice pursuant to section 47 of the *Act*?
- If the tenants are unsuccessful in seeking to cancel either notice, is the landlord entitled to an Order of Possession of the rental unit pursuant to section 55(1) of the *Act*?
- Are the tenants entitled to reimbursement of the Application filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement. Both parties signed the agreement on September 2, 2020 for the tenancy starting on October 1, 2020. The rent is \$1,200 per month payable on the first of each month. The tenants paid a security deposit of \$600 on September 1, 2020.

An addendum signed by the parties contains additional terms. These include:

- No pets inside or outside the house.
- No smoking inside or outside the house.
- Tenant has to pay full rent and bill on the 1st of every month."
- Tenant will pay the BC Hydro Bill and the fuel for heating.

I have placed the evidence and submissions of each party into two separate headings below:

1) re: 10-Day Notice

The landlord issued the 10-Day Notice on November 2, 2020. This instructed the tenants that they must move out from the unit by November 15, 2020. The reason is provided on page 2 of the 3-page document: The tenants failed to pay rent of \$1,200 due on November 1, 2020; and the tenants failed to pay utilities of \$215 on November 1, 2020.

The landlord submitted that the tenants had not paid rent on the specified date indicated on the document and had not advised when they would pay. They served this document by attaching it to the door of the rental unit. After the tenants received this notice, they paid the rent on that very same day. They then informed the landlord they would pay the utilities amount owing at a later time.

After this, the tenants informed the landlord they would not pay the power bill until they received an actual bill. By November 1st, there was a utility bill for \$215. This is a portion of the hydro bill, so it is not actually set out on an actual document to show this.

In the hearing, the tenants provided that they asked the landlord if they had received a bill. They said the amount of \$150 is on the lease, but they are actually not sure of the amount, and won't pay until they actually see the bill. They paid \$150 with the initial October 2020 rent. Additionally, the landlord stated to them that they did not actually know how much the bill amount was.

2) re: One-Month Notice

On page 2 of the document, the landlord listed the following reasons and provided details on a separate two-page document:

- ☐ tenant has allowed an unreasonable number of occupants in the unit/site/property/park
- ☐ tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed 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 caused extraordinary damage to the unit/site or property/park

- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the hearing, the landlord presented the timeline from mid-October. On October 18, the cameras installed by the landlord captured images of the tenants smoking on a porch area. When asked, the tenants “kind of agreed to it”. The landlord then gave a letter to the tenants, dated October 19. This states, in part: “As stated in the agreement section 17C . . . Landlord has notice[d] several times that tenants and guests are smoking on the property and that is totally not acceptable.”

On October 19, a witness for the landlord who spoke in the hearing gave their recollection of their visit into the unit on October 19. There they observed two cats, with the “whole living room messed up – carpet, walls, everything”.

In response to this, the tenants provided that the landlord gave the ‘breach letter’ to them on October 19. At this time, they were told to smoke beside the greenhouse, and “since then, we drive away from the property.” They admitted to smoking on the 18th, as seen in the video images; however, after this time they have smoked by the tree and the greenhouse. This area was specified by the landlord’s father.

Two witnesses attended the hearing to speak directly to matters concerning the pets. They both affirmed that the cats in question – those observed by the landlord on the 19th – are their pets now exclusively. These they took “prior to the tenants move in”. One witness also verified that the landlord asked them to “smoke by the tree”.

Analysis

1) re: 10-Day Notice

I find the tenants paid the rent as required on the same day as the service of the 10-Day Notice on November 2, 2020. This was the full amount of \$1,200. The landlord did not dispute that the tenants paid the full amount.

I find the tenancy agreement is vague on the tenants’ responsibility when it comes to payment of utilities. The agreement itself does not specify the amount in terms of a percentage or set fixed amount. I find it reasonable for the tenants to request to see an actual bill amount for payment.

At the time of the issuance of the 10-Day Notice, the bill amount was not known to the tenants. The landlord did not provide a copy of a bill to show this was the correct

amount as specified, for \$215. In sum, there is no verification that the utility amount is what is owed by the tenants. If it is pro-rated for a certain portion of payment by the tenants, that information is not clear to the tenants.

Based on this, the 10-Day Notice is invalid, and cancelled for this reason.

2) re: One-Month Notice

Section 47 of the *Act* states, in part:

- (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
 - (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,
 - (iii) put the landlord's property at significant risk;
 - (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;
 - (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.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to the reasons in oral testimony and provided documentary evidence; however, I find there is not sufficient evidence to show the One Month Notice is valid. Primarily, the evidence presented does not substantiate the grounds indicated on page 2 of the document.

The landlord presented no evidence of "an unreasonable number of occupants in a rental unit", even though they indicated this as a reason on the second page of the document.

For the next reason indicated, I am not satisfied that there is any element of "significant risk" or significant interference with others. If this is the issue of smoking, or even that of pets, as brought by the landlord, they did not present their evidence or details in those terms. The risk is not proven in the evidence.

Further, there is no evidence of “extraordinary damage to the unit/site or property/park.” This was not presented in the landlord’s evidence. The tenants acknowledged disarray due to a recent move into the unit; however, I find this does not amount to extraordinary damage.

The landlord referred to the tenants’ initial statements at the start of the tenancy that they did not smoke, and they did not own pets. Certainly, these statements contradict what the landlord observed directly on camera footage and on their visit to retrieve an electrical component.

This is not a matter that violated the tenancy agreement to a degree that it constitutes a breach of a material term. As provided for in the *Residential Tenancy Branch Policy Guideline 8 ‘Unconscionable and Material Terms’*, which gives a statement of the policy intent of the *Act*, a material term is one which both parties agree is so important that “the most trivial breach of that term gives the other party the right to end the agreement.”

Here, there is no evidence of another infraction with regard to smoking after the landlord provided the ‘breach letter’ to the tenants on October 19, 2020. I find the tenants credible that they have undertaken to smoke well away from the rental unit. I find this is a firm indication that they have corrected the situation within a reasonable amount of time, as specified in section 47(1)(h)(ii). For the reason of smoking, I find the reason for the One-Month Notice is invalid.

With the two cats, I find they have also rectified the situation within a reasonable amount of time. The witnesses brought to the hearing by the tenants stated in their affirmed oral testimony that they were the owners of the cats. These are cats that formerly belonged to the tenants. In their own testimony, the landlord provided that the tenants told them directly that they had given these cats to their friends. For the reason of pets, I find the reason for the One-Month Notice – in relation to a breach of a material term – is invalid.

In the alternative, the very important element regarding breach of a material term is that the tenants’ have had time to rectify the situation. The smoking, as observed by the landlord and admitted to by the tenants – occurred on October 18, as evidenced in the video captures. The observation of the cats occurred on October 19. By October 21, the landlord served the One-Month Notice, for one reason being the material term breach. Based on the tenants’ whole picture, wherein they moved into the unit very recently, with one tenant undergoing a surgical procedure immediately in the interim, I

find service of the One-Month Notice two days after these observations is not “a reasonable time after the landlord gives written notice to do so.” In their testimony and deportment within the hearing, I find the tenants delivered forthright statements that are credible that they commit to abiding by the terms of the tenancy agreement going forward.

For these reasons, I order the One Month Notice issued by the landlord on October 21, 2020 is cancelled. The reasons for the landlord issuing this document are not valid.

As the tenants were successful in this application, I find the tenants are entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenants to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the 10-Day Notice issued on November 2, 2020 is cancelled. The One-Month Notice issued on October 21, 2020 is also cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 28, 2021

Residential Tenancy Branch