



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC. FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 4, 2021 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenants, the Landlord, Z.W., and a translator for the Landlord, A.W. ("Translator"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenants said that they served their Application and the Notice of Hearing to the Landlords in person on January 7, 2021, and that they gave the Landlords their evidence in person on March 8, 2021. The Landlord indicated that they had received these documents from the Tenants. The Landlord uploaded his evidence to the RTB a day before the hearing, and he acknowledged that he did not serve the Tenants with this evidence at all; he said he thought they had the documents, anyway. However, I advised the Landlord that the RTB Rules and the Rules of Natural Justice require parties to provide all documentary evidence to the other party, so that that other party will know what the first party is relying on for their case. As such, I will not consider the Landlord's documentary evidence, as it would be administratively unfair and contrary to our Rules to do so.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and they

confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2019, with a monthly rent of \$2,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,250.00, and no pet damage deposit.

The One Month Notice was signed and dated January 4, 2021, it has the rental unit address, it was served by dropping it in the mailbox or slot and taping another copy to the door on January 5 or 6, 2021. It had an effective vacancy date of March 1, 2021. The One Month Notice was served on the grounds that the rental unit must be vacated to comply with a government order.

After discussing my question with the Landlord, the Translator said that the reason for the eviction notice is because the City required the Landlord to change the water, electricity, and the gas in the building. He also said: "We have to put in new doors from the wooden doors, and fire alarms within the building."

When I asked why the Landlord needed vacant possession of the rental unit for these matters, the Landlord said through the Translator: "Because we need to shut down water and electricity, and the exit door is not safe." I asked how the door was not safe, and the Landlord said: "It is a City requirement to say it's not safe for the tenants to be living there." Ultimately, the Landlord said that the door is wood and that it has to be replaced to decrease the fire danger.

The Tenants said:

First, we asked him when we received the One Month Notice, we asked for the government order. He never showed us any documents that the government is requiring our unit to be vacant.

Also, we enquired with the City under the Freedom of Information. We sent a request on January 11th, and we asked for orders re vacant possession. We submitted the City's reply as evidence, and the reply was that 'We have completed the search and no responsive records have been issued.' There are no orders for the suite to be vacant. The City Inspector also confirmed that no such order was given by the Landlord to vacate the upper unit of our house. There has been no order from the government. The reason in the One Month Notice is invalid. That's the wrong reason.

The Landlord did request that he change the fire alarm – it's changed already. The doors are perfectly safe. We have two entrances; there have never been any issues with the entrances or exits.

Regarding shutting down the water – he did shut it down for a couple hours on Sunday, and there was no problem. So, we don't understand why he's asking us to leave the unit.

The Landlord said:

The small jobs that we have to do - we accomplished that - but we haven't started working on the big stuff yet. There is an existing door – mid-entrance - and the City has told us to change the entrance from the upstairs to the basement within the building. We haven't been allowed to work on that. The door is wooden, and it is for safety – if there is a fire it is safer.

We have a special inspection notice, but because of when we uploaded it, since we can't use that, I don't know what to say – they are asking us to do these procedures.

We need it to be vacant, because on the back of the house from the stairway to the sundeck, we need to take down the stairway, too, and create a new entrance.

They can use the front entrance, but the back yard is completely in construction, since they have laundry machine in the garage. The backyard, the sidewalks we're taking all that down and reconstructing.

The Tenants said:

None of the reasons they've given make any sense. If he wants to renovate his basement, it has nothing to do with us. The door he's talking about, we've stored some boxes and stuff there, but they want access to the door to measure it, and we asked to move the boxes and then they can measure it.

The rest of doors were new. The front door – ground level, no problem with the entrance. That's how we get to the garage to do the laundry. Going to the garage is no problem.

What else – he said 'big stuff' – nothing that needs to be done in our apartment. It's completely new. The basement renovation has nothing to do with our unit. We are having a discussion with him on a daily basis, so we're not sure why he's pretending he doesn't speak English. They're just discussing what to do.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

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

...

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

I find that the Landlord did not provide sufficient testimony explaining why the rental unit has to be vacant for the renovations the Landlord wants to do or has to do to the residential property. I find that the Tenants' testimony of having searched unsuccessfully for such an Order through Freedom of Information legislation to be compelling evidence. I have not considered the Landlord's documentary evidence, because it was not submitted at least seven days prior to the hearing, and because he did not serve it to the Tenants.

However, I note that the Landlord appeared to struggle for a reason why he needs vacant possession of the rental unit for the work that he wants to do. I find that the

Landlord has provided insufficient evidence of a government order requiring vacant possession of the rental unit.

As a result, I cancel the One Month Notice pursuant so section 47 of the Act, and find that it is void and unenforceable. Further, the Tenants are awarded recovery of the \$100.00 Application filing fee. The Tenants are authorized to deduct \$100.00 from one upcoming rent once in complete satisfaction of this award.

Conclusion

The Tenants are successful in their Application, as I have cancelled the One Month Notice, because the Landlord submitted insufficient evidence of a ground for the eviction, pursuant to the Act. The One Month Notice is of no force or effect and is void and unenforceable.

The Tenants are awarded recovery of the \$100.00 Application filing fee. They are authorized to deduct \$100.00 from one upcoming rent in complete satisfaction of this award.

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: March 23, 2021

Residential Tenancy Branch