



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1278867 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, LRE, OLC, 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 10, 2021 ("One Month Notice"); for an Order for repairs to the unit, site or property, having contacted the Landlord in writing to make repairs, but they have not been completed; to suspend or restrict the Landlord's right to enter; for an order directing the Landlord to comply with the Act, regulation or tenancy agreement; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, G.F., M.F., and S.M, and their friend/advocate, D.W. ("Advocate"), and an agent for the Landlord, J.L. ("Agent"), 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 Agent 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

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

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.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The tenancy agreement lists the adults and minors inhabiting the rental unit, and two minors were identified as both having the initials "A.F." As minors are not parties to tenancy agreements in circumstances such as this, I have removed the names of the minor children from the Application, pursuant to section 64(3)(c) and Rule 4.2.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenants indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request to set aside the One Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

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.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Issue(s) to be Decided

- Should the One Month Notice be Cancelled or Confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on November 1, 2020 and was to

run to October 31, 2021, with a monthly rent of \$4,100.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$2,050.00, and no pet damage deposit.

The Landlord served the Tenants with a One Month Notice that was signed and dated January 10, 2021, it has the rental unit address. The One Month Notice was served by attaching a copy to the rental unit door on January 10, 2021. It has an effective vacancy date of February 21, 2021, which is automatically corrected by the Act to February 28, 2021. This eviction notice was served on the grounds that the Tenants knowingly gave false information to prospective tenant or purchaser of the residential property. In a note on page 3 of the One Month Notice, the Landlord wrote: "Tenant unreasonably refuses access to show the unit to prospective buyers."

In the hearing, the Agent said:

I'm looking to retain possession; the house is for sale. We own and rent out 50 single family dwellings, and [S.M.] is the most difficult tenant to deal with. He knows the rules very well. He deals in bad faith. It's impossible to sell the house with them. The realtor wants to quit, because [S.M.] is so much work. A \$5 million home is difficult to sell with difficult tenants. It was a \$3.5 million risk – buying this house without seeing it. He says to sell the house from the outside, the way I bought it, but not many people can buy it without seeing it on the inside.

The Tenant, M.F., said:

He keeps mentioning it is impossible to buy the house. In one of the evidence packages, this is the reason he is serving the Notice - because he wants to sell the house.

We didn't serve false information. We never saw any prospective buyers come in, so it's inapplicable.

We asked for a different time for viewing – rather than 3:30 p.m., we asked for it at 7:00 p.m., not in the afternoon. With the Covid guidelines, only six people max at one time can be in the house. We are a family of five, and we can't be asked to leave, because of our personal valuables. Where would we go? Furthermore, if more than one viewer, the number of people goes up to seven, which is against the [Covid] guidelines.

We never refused them to come. All communication was between me and their agent. He asked for Sunday, and we asked can this viewing be on week days when the kids are at school, ... or Sunday afternoon at 7:00 p.m.

We never refused anyone to their property. The previous landlord sold the property, but only twice the seller agent came to see the house inside and out.

When asked when prospective buyers could come, the Tenants said:

Weekdays, or any other time, but not on Sunday. That's a difficult time – the only day we don't work is Sunday. Sundays are our religious days. We have the time together - we can actually practice. At 7:00 p.m. we could leave the house. They never requested any other day. You can come any other day and any other time when there are not five people home.

The Agent said:

In my mind these tenants are repeat offenders. I purchased without seeing it. Every time other than this, I've seen the interior of the property. It's common sense to look inside the house. This is a repeated behaviour in this. I had been trying to get into this house, but I couldn't.

I asked the Agent for examples of when the Tenants refused to show the house to prospective tenants. The Agent referred me to electronic communications in which the Tenants refused to give or allow the Agent to make a duplicate key. The Agent said that this demonstrates the Tenants' "ridiculous behaviour". He said no key was provided.

I asked the Tenants about this claim, and they said that they only have one set of keys and that their mother carries it. They said that the door has a lot of issues. The Tenants would not have a key cut at a hardware store, because they said they were not sure that the Landlord would pay them back for it. Further, the Tenants would not allow the Landlord to borrow the key to make a copy, himself. The Agent said that the previous owner did not give the current Landlord a set of keys to the residential property.

The Agent went on to direct my attention to evidence he said shows the problematic behaviour of the Tenants in this matter, further to his difficulty with the keys. The Landlord submitted a copy of a text communications his realtor had with S.M., which includes [reproduced as written]:

Tenant: Second... no viewing allowed inside I mean only outside.

Realtor: As I really tried to explain to you they as a landlord have the right to access the unit for sale purposes with notice of 24hrs.

Tenant: No they don't . . . call bc rent and chk
Covid 19. And . . .
Only viewing from outside is ok. I can't risk and let anyone coming inside house.. plz do understand
Beside they said they bought it as is so then sale it as is then.

Realtor: I just wanna confirm we have a client that wants to see inside house I wanna confirm you wont let us in? They will wear mask and gloves and they will keep the distances and the covid forms will be filled and everything will be within the guidelines. Is that not an option?

Tenant: Omg
No I can not...plz let us leave us enjoy f..king rented pp..we have had enough drama in past 2 months and really cant
Sorry.

Realtor: The landlord ask me to put a 24hrs notice on the door as landlord wants to sell the property, so if you can give me preferred time that would be ideal if not the showings will be at noon.
There is a showing request for Sunday at 12

Tenant: sorry man...cant
must be within weekdays and i will have to check with family first (sunday everyone are at home)... it is not what owner wants always...beside i need all issue to be fixed asap...i will send formal email in this regards.

The Agent said:

They never told me it was a religious holiday. I would have respected that.
It's hard to purchase a house if it has to be evaluated in the dark. Showings were arranged in mid-afternoon. No one showed up, because [S.M.] only agreed on the morning. And they show up at the door and they don't let you in. No one is going to want to come back. We're sitting on 10 showings now; I don't want to lose.... He's made it so it is impossible to show. There's five of them in the

house, I don't want. I don't want to make a \$4 or 5 million gamble with their behaviour

M.F. said:

He was saying it's too dark from inside at 7 o'clock, but there are lights. That's the basis of every house. They could come view it on Sunday, January 10 inside at 7 p.m. or any weekday.

During the day [Sundays] we practice our religion. It's no problem showing it on Saturday or any other day of the week other than Sunday - any time. We did mention any other day of the week, but Sunday would not work.

The Agent said: "We would have the same issues on Monday, Tuesday, Wednesday...". The Agent quoted another text exchange between the S.M. and the realtor, as follows [reproduced as written]:

Realtor: [S.A.] im just the realtor! Every showing that comes i have to let the owner know and let you know as well.

Tenant: [two thumb's up icons]

Realtor: the notice was ammend before the 24 hour period. So your confirming you will not allow me inside correct?

Tenant: Of course you can. We play by book...7pm Sunday you can
I was born one night but it was not last night... we should both respect each others right...
This game of buying selling is not going to stop and I really don't give a rat... but I know my right and really I wanna enjoy my rent peacefully and till end of our terms...
Is this too much to ask

Realtor: I have told you the times and have done as much as possible to appease you. Thank you

Tenant: It's not what you want ...its what we agree to...again 7pm Sunday you or who ever wants to see inside house free to pop up...also one person as we alrdy 5ppl and can take 1 more ppl as per law...[smiley face icon]

Realtor: Again that has not been agreed to. Hence the note on your door.

The Agent said:

I had to cancel all my showings, because you can't send prospective buyers there and have them turned off - after I realised that I burned two prospective buyers. He's very uncooperative. I am sitting on 15 showings... if you want to go look at a house.... They won't even give me a key. They're playing games and they know the times when they can cancel things. All of a sudden, we're here.

The Advocate said:

In summary, to walk through a brief chronology, they entered a lease on November 1, 2020. Then on January 4, the director of the numbered company provided a signed addendum. In the evidence it goes on to say the property was sold to [a BC Ltd. company]. It said the owner will fulfill the lease with the Tenants ending on October 31, 2021. That was January 4.

From moving in originally to today, there are a number of things outstanding to be repaired. It's a game – I agree - people are sent to poke around and look, but nothing is being done. Important things have been taken care of by the Tenants.

On January 8, magically, an unsigned contract to purchase by a new company appears. When they don't move willingly, magically on January 10 they are issued a one month notice 24 hours later, along with a \$35,000.00 law suite in the Supreme Court. This doesn't add up. It goes to the issue – 'we're getting these tenants out', and this bears out in the evidence.

The Agent confirmed that he had to cancel three showings of the residential property on the Sunday, January 10, when the Tenants would not allow the showings. He did not indicate other days on which showings were cancelled, due to the Tenants' behaviour.

Analysis

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

Section 29 of the Act sets out a landlord's rights and restrictions regarding entering the rental unit. Section 29 states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

RTB Policy Guideline # 7 “Locks and Access” helps clarify and interpret section 29. It states:

7. Locks and Access

At common law, the tenant has a right to quiet enjoyment and peaceful occupation of the premises. At the same time, the landlord has the right to enter under certain conditions. The Residential Tenancy Act (the Act) addresses the rights and obligations of landlords and tenants with respect to entry into a rental unit.

. . .

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or

- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or the landlord has an arbitrator's order authorizing the entry. .

[emphasis added]

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m.

The notice must be served in accordance with the Residential Tenancy Act. If the landlord leaves the notice in the mailbox or mail slot, or attaches it to the door or other conspicuous place on the rental unit, the notice is not deemed to be received until 3 days after posting or placing it in the mailbox or slot. If the notice is sent by mail, the notice is not deemed received until 5 days after mailing. If the notice is sent by fax, the notice is not deemed received until 3 days after faxing it. This additional time must be taken into consideration by the landlord when advising of the date and time of entry.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or showing the premises to prospective purchasers. .

[emphasis added]

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly.

Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions. .

[emphasis added]

The Landlord issued the One Month Notice on the basis that the Tenants “knowingly gave false information to prospective purchasers of the residential property.” The Landlord also alleged that the Tenants “unreasonably refuse access to show the unit to prospective buyers.”

Section 47(1) of the Act states that a landlord may give notice end a tenancy if one or more of the following applies:

. . .

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

I find that the Landlord has shown that the Tenants can be uncooperative with the Landlord. For instance, I find it unreasonable of the Tenants to refuse to provide the Landlord with a copy of the keys to the residential property, especially if the Agent is willing to pay the cost to have these made. However, this is not a ground to end the tenancy, and this is not what was alleged by the Landlord as the reason for issuing the eviction notice.

I find that the Agent provided one example of when the Tenants refused to show the

residential property to prospective purchasers on January 10, 2021; however, they offered reasonable alternatives that day and/or on a weekday. I find the Agent inferred that the Tenants *would be* unreasonable at other times, given that they denied him access at the showing times he requested for January 10, 2021. However, based on the evidence before me, I find that the Agent did not try showings on other days and/or at other times. I find the Landlord provided insufficient evidence that the Tenants were uncooperative on more than one occasion. Further, I find that the Tenants were not, in fact uncooperative on January 10, 2021. I find that they were protecting their right to quiet enjoyment of the residential property on the one day in the week that they had together to practice their religion.

I would like to caution the Tenants, however. They said that they were willing to leave the residential property for a showing; however, they also implied that if they were home, only one person could go through the rental unit at a time. I find that the latter behaviour **is** unreasonable, especially when contrasted with their offer to go for a drive in their automobile during a showing. I urge the Tenants to follow the latter activity for showings that do not interfere with the practice of their religion on Sundays.

I find that the Landlord has not provided sufficient evidence to support the grounds stated on the One Month Notice. I find there is no evidence that was presented to me to show that the Tenants gave any prospective buyers false information, as alleged. I, therefore, cancel the One Month Notice and find that it is void and unenforceable. The tenancy will continue until ended in accordance with the Act.

Given their success in this Application, I award the Tenants with recovery of their \$100.00 Application filing fee. The Tenants are authorized to deduct \$100.00 from one future rent payment in complete satisfaction of this award.

Conclusion

The Tenants are successful in their Application to cancel the One Month Notice. This eviction notice is cancelled and is void and unenforceable. The tenancy will continue until ended in accordance with the Act.

The Tenants are awarded recovery of the Application filing fee, and they are authorized to deduct \$100.00 from one upcoming rent payment in full satisfaction with this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 14, 2021

Residential Tenancy Branch