



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1108889 B.C. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, CNC, MNDCT, AS, FFT

Introduction

On March 17, 2021, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant to Section 49 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking authorization to assign or sublet the rental unit pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant J.B. and Landlord K.H. attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

All parties agreed that the Landlord was served with the Tenants’ Notice of Hearing and evidence package by email on April 22, 2021. Based on this undisputed testimony, I am satisfied that the Landlord has been duly served with the Tenants’ Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord was advised that the Tenants were served with the Landlord’s evidence by email on June 22, 2021 and the reason he served this evidence so late was because he was busy. The Tenant confirmed receiving this evidence on June 22, 2021 and she acknowledged that she was prepared to respond to it. While this evidence was served late and not in accordance with the timeframe requirements of Rule 3.15 of the Rules of

Procedure, as the Tenant was prepared to respond to it, I have accepted this evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the notices to end tenancy, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the notices cancelled?
- If the Tenants are unsuccessful in cancelling the notices, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2019. While the Tenant was of the belief that there was a signed tenancy agreement between the parties, there was no documentary evidence submitted to corroborate that there was in fact a signed and agreed upon tenancy agreement. They agreed that the rent was established at \$2,000.00 per month at the start of the tenancy; however, there were allegedly changes to this amount during the tenancy, which were not discussed or relevant to this hearing. They also agreed rent was due on the first day of each month and that a security deposit of \$1,000.00 was also paid.

While the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, the Landlord acknowledged that he served a form that he found on the internet entitled "Notice to Quit", and he served this document to the Tenants in order to give them "at least 60 days notice to quit the Premises..." He acknowledged during the hearing that, in retrospect, he realized that this was not an approved form under the *Act* that he could use to end the tenancy.

He then advised that the One Month Notice to End Tenancy for Cause was served to the Tenants by hand on March 16, 2021 and the Tenants clearly received this as they disputed the Notice within the required 10-day time frame. The reasons the Landlord served the Notice were due to the following:

- The Tenants have allowed an unreasonable number of occupants in the unit/site/property/park.
- The Tenants are repeatedly late paying rent.
- The Tenants have assigned or sublet the rental unit/site/property/park without first obtaining the Landlord's written consent.

The Notice indicated that the effective end date of the tenancy was April 30, 2021.

With respect to the repeated late payments of rent, the Landlord advised that his accounting department informed him that the Tenants provided half a dozen cheques that bounced due to insufficient funds. While he submitted some bank statements as documentary evidence to support these allegations, he had no knowledge of what this evidence demonstrated, nor could he provide any details of what this evidence proved.

The Tenant advised that they paid the first month's rent by electronic transfer, but they paid rent for each subsequent month by cheque. She stated that a lady who lived on the property was an agent/bookkeeper for the Landlord and this lady would come to collect the rent every month. However, this person would not always come on the first of each month to collect the rent, despite the rent cheque being available for pickup. She stated that they have paid the Landlord the rent by online payments since February 2021.

The Landlord confirmed that this person is his bookkeeper and that she collected the Tenants' rent each month. However, he insisted that she would attempt to do so on the first of each month. Despite these alleged late payments of rent, he stated that he never issued a 10 Day Notice to End Tenancy for Unpaid Rent as he did not want to end the tenancy during a pandemic.

With respect to the other two reasons on the Notice, the Landlord advised that the Tenants rented out two extra trailers on the property to at least three other people, and that this was not authorized. He only discovered that this was happening in December 2020. When he investigated this situation that month, he confirmed that there were

extra people and trailers on the property. However, he did not do anything to warn the Tenants that this was not allowed. The only time he addressed this issue was by serving the Notice.

The Tenant advised that she was given authorization by the other co-owner of the property to bring her own trailer onto the property in June 2020 and rent it to another person. However, this person left in December 2020 and no longer lives on the property. She then stated that the bookkeeper has had a trailer on the property since 1996 and that the Landlord has known about this. As well, the bookkeeper rented her trailer out to another person, and this arrangement has nothing to do with the Tenants, other than the bookkeeper pays the Tenants a sum of money to have the trailer on the property. Other than these situations, there has been nothing done on the property which supports the Landlord's allegations.

The Landlord confirmed that one of the trailers he spoke of belonged to his bookkeeper. As well, he advised that he was unaware of what the other co-owner may or may not have authorized.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Before assessing the notices to end tenancy, I will first address the terms of the tenancy. While a tenancy agreement has been submitted as documentary evidence, it has clearly not been signed by either party. While the Tenant claims that some terms that were initialled within the tenancy agreement by both parties establishes that this is a signed agreement between the parties, I do not agree. As the last page of the tenancy agreement clearly requires both parties to sign, and as there are no signatures on any of the copies of the tenancy agreement submitted, I am satisfied that there has been no written tenancy agreement established as required by Section 13 of the *Act*. Consequently, I find that the parties entered into a month-to-month unwritten tenancy.

With respect to the Tenants' request to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, the Landlord acknowledged that he did not serve the approved form to end the tenancy for Landlord's use of property, and that this "Notice to Quit" was a mistaken attempt to end the tenancy. When reviewing this document, I am satisfied that the Landlord's "Notice to Quit" is not an approved form that he may use to end the Tenancy under the *Act*. As such, I find that the form that the Landlord served is not a valid notice and it is of no force or effect.

I will now turn to the One Month Notice to End Tenancy for Cause. In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied

with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

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

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(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];

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Regarding the reason of repeated late payments of rent, I find that the Landlord was ill-prepared and had little knowledge of which months the Tenants were allegedly late paying the rent. During the hearing, I refreshed the Landlord of what documentary evidence he submitted; however, I advised him that I was not able to go through his evidence to make his arguments for him. He could not directly speak to his evidence nor could he point out where his documentary evidence supported his allegations of repeated late payments of rent. Given that the burden of proof rests with the Landlord to justify and substantiate the reason for service of the Notice, I do not find that the Landlord has adequately established that the Tenants repeatedly paid rent late.

With respect to the reasons of the Tenants allowing an unreasonable number of occupants in the rental unit and/or the Tenants assigning the tenancy or subletting the rental unit without the Landlord's consent, I note that the Landlord provided little compelling or persuasive submissions and he could not refer to any documentary evidence to support those submissions. Again, as the burden rests with the Landlord to prove the reasons for service of the Notice, I do not find that the Landlord has established the legitimacy of these allegations, on a balance of probabilities.

When reviewing the totality of the evidence before me, I am not satisfied that the

Landlord has satisfactorily justified ending the tenancy for any of the reasons checked off on the Notice.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. The Tenants are permitted to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of March 16, 2021 to be cancelled and of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

Furthermore, as the Landlord's "Notice to Quit" is not an approved form that could end a tenancy under the *Act*, this form is rendered meaningless and is of no force or 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 *Residential Tenancy Act*.

Dated: June 29, 2021

Residential Tenancy Branch