Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL CNR FFT

Introduction

The tenants (hereinafter the "tenant") filed an Application for Dispute Resolution on March 7, 2021 for a cancellation of the One Month Notice to End Tenancy for Cause (the "One-Month Notice") issued on March 2, 2021. They also applied for reimbursement of the Application filing fee.

On May 4, 2021 the tenant filed an amendment to the Application, for cancellation/withdrawal of a 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"), and a Two-Month Notice to End the Tenancy for the landlord's Use of Property (the "Two-Month Notice").

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 15, 2021. The tenant attended the hearing; the landlord did not attend.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means that the tenant must provided proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The tenant set out how they served this notice to the landlord in person, prior to the set deadline for doing so as specified on the document itself. In the hearing the tenant specified that the landlord contacted them and replied in multiple messages that the landlord had to call to the Residential Tenancy Branch because of this hearing. The tenants also provided the subsequent amended Application, and all of their evidence to the landlord in proper fashion. This was by posting all the prepared evidence in document form to the landlord's door, where the landlord lived in the upstairs unit from the tenant who lived in the basement.

I accept the tenant's account that they provided all of the hearing information to the landlord in a timely manner. I accept that the tenant served notice of this hearing and their prepared evidence, each in a manner complying with s. 89 of the *Act*. The hearing thus proceeded in the landlord's absence.

Issues to be Decided:

- Is the tenant entitled to a cancellation of the One-Month Notice?
- Is the tenant entitled to a cancellation of the 10-Day Notice?
- Is the tenant entitled to a cancellation of the Two-Month Notice?
- Is the tenant entitled to recover the filing fee for the Application?

Background and Evidence

The tenant provided a copy of the tenancy agreement in their evidence. They signed the agreement with the landlord on January 20, 2021 for the tenancy starting on February 1. The rental amount was $1,500 per month. The tenant paid a $750 security deposit. The tenant also paid a "non-refundable pet fee" of $750. The agreement also specifies that the landlord is responsible for up to $250 for heat/electricity, and $100 for Wi-Fi, with anything above that being the tenant's responsibility.

The landlord issued the One-Month Notice on March 2, 2021. This gives the move-out date of April 30, 2021. The reasons listed on the second page are:

- tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- 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

The landlord provided details on the document. This involves the tenant "bringing outside pets on property", with the dog barking and putting other animals at risk. The document alleges the tenant parked in the landlord's own parking spot, and there was $1000 of damage in the first month of the tenancy. Further, there was a statement about "gatherings during covid restrictions" and "allowing horses out of the property."

The tenant presented all messaging they had with the landlord virtually since the start of the tenancy. On specific items listed by the landlord on the One-Month Notice, the tenants provided as follows:

- there was a single incident of a family member bringing their own dog on a visit;
- the tenants did not receive a written warning about pet clean-up, despite the landlord stating a warning was being delivered – further, there are a number of other animals on the property making the sources difficult to discern
- "Continually [sic] parking in landlords spot" refers to a single incident when the tenants were not aware from the outset of the specific areas for parking
- $1,000 in damage refers to a single incident with the breaker/sump pump being turned off
- the tenant chooses to park away from the front gate because of the horses' presence there
- there is no term in the agreement stating "no visitors" so the tenant was unaware that gatherings would be the ground for eviction

The landlord did not attend to speak to specific incidents that are set out as "details of causes" on the One-Month Notice.

The landlord later issued the 10-Day Notice. The date provided by the landlord on the 10-Day Notice is "23/05/2021". In the hearing the tenant presented this was obviously in error, with the landlord actually issuing the document on April 23, 2021. The date specified for the tenant's move out is May 3, 2021. The landlord gave a date to indicate there was rent owing on March 23, 2021; however, there is no amount specified. The landlord also added a utility amount owing of $148.47, that was due on May 5, 2021.

The tenant made an amendment to their initial Application to add their dispute of this 10-Day Notice. The document specifies a tenant has five days to make an application to do so.

In the hearing, the tenant presented that they were never shown a copy of the utility invoice in question. They stated they "asked for this a few times". In their evidence the tenant provided

an image of “balance to date”, after equal payments of $750 were subtracted from the cost of electricity total being $898.47.

The landlord did not attend the present their version of events on a utility amount owing. The tenant in the hearing reiterated that they never received utility information or invoices from the landlord.

The tenant received the Two-Month Notice that was issued by the landlord on May 1, 2021. This gave the move-out date of July 1, 2021. This stated the “father or mother of the landlord or landlord’s spouse” will occupy the rental unit. The landlord also wrote on the document: “[Regional District] was called, came and inspected the property. Suite is not legal and [the landlord has] been given notice that we have to remove tenants and return it to an inlaw suite.”

On their own, the tenant contacted the regional district to verify the information. The tenant provided a copy of their email from the bylaw officer who informed the tenant on May 3: “No we have not done an inspection as yet.” Further: “I can tell you that the suite was not built with a permit for a second dwelling so it is likely it is non conforming.”

Additionally, in their written submission the tenant provided their account that “Technical Safety BC” came to the unit to do an inspection on April 22. Technical Safety BC then emailed the landlord a report of that inspection.

Again, the landlord did not attend to present the reasons for issuing this Two-Month Notice.

Finally, the tenant presented that they vacated the unit on May 29, 2021. This was after they advised the landlord of this on May 18, 2021 after utilities to the rental unit were shut off. They included an image of this notice to the landlord taped to the door of the landlord’s abode. The tenant provided that this notice also contained their forwarding address.

The tenant paid the full month rent for the month of May 2021. In their written submission, they stated: “In conclusion, as of May 29th, tenants have decided to take the 2-month eviction notice and have removed all belongings from suite.” They stated they expected “the equivalence of one month’s rent due to leaving before July 1st . . .” They also noted they expect the full return of the damage deposit and provided photos of the undamaged suite.

Analysis

For each of these notices to end tenancy, the onus is on the landlord to provide they have cause to end the tenancy. The landlord did not attend to present their reasons for each notice. This leaves the documentary evidence and oral testimony of the tenant as the sole pieces for my consideration on the validity of each notice.

Regarding the One-Month Notice, I accept the tenant's evidence that there was no proper notice from the landlord on a good portion of the incidents in question. The landlord did not follow up on incidents with a written warning as they stated in some messages to the tenant. Moreover, what the landlord provided for "details" refer to single incidents that are not necessarily specified in the tenancy agreement. The damage amount is not proven, and the tenant provided ample evidence to show that there was no damage, and certainly nothing of monetary value was ever presented to them.

In sum, I find the tenant provided sufficient evidence to overcome the burden of proof that should be established by the landlord. Based on my review of all the messaging that the tenant provided, the tenant does not bear full responsibility to any degree that the tenancy should end for the reasons given. For this reason, I order the One-Month Notice issued by the landlord on March 2, 2021 to be cancelled. The reasons for issuing the notice are not valid.

Regarding the 10-Day Notice, I accept the tenant's evidence that the landlord never provided proof in the form of actual invoices that show utility amounts owing. The tenant properly challenged this within the timeline specified on the document. Without evidence in support of the notice from the landlord, it is cancelled and of no force or effect.

Finally, on the Two-Month Notice, the landlord indicated the reason for ending the tenancy was the Regional District declaring the rental unit not legal. This conflicts with the fundamental reason for such a notice to be served for the landlord's own use. I am not satisfied the landlord issued this notice for their own or a family member's use.

Further, there is an issue of good faith where the landlord indicated that the Regional District made the inspection. The tenant provided evidence to show the inspection by the Regional District did not yet occur. I find – minus evidence to the contrary – that this document contains incorrect information by the landlord. This calls into question the landlord's ulterior motive for issuing the Two-Month Notice. I find the document is not valid where the landlord issued this after they issued two other notices to end tenancy previously – this reveals an ulterior motive and I find the primary motive here was to evict the tenant by whatever means possible.

In sum, there is no legal basis for any of the three notices to end tenancy issued by the landlord here. The tenant has provided sufficient evidence throughout to show that each of the notices is without merit and issued on false pretexts or with insufficient information flowing to the tenant.

In closing, the tenant provided that they moved from the unit on May 29, 2021. This was after they provided notice of this to the landlord on May 18, 2021. I find May 31, 2021 is the final end-of-tenancy date – this is the date the tenant provided to the landlord in their notice. Above, I ordered the Two-Month Notice is cancelled and of no force or effect. Even though the tenant made no specific monetary claim in their Application, I find the tenant is not eligible for one month's rent in compensation. This is a situation where they made their own move out of the rental unit prior to the final end date indicated on the Two-Month Notice. The tenant must also pursue the proper avenue to claim the return of their security deposit after the end of the tenancy in the event the landlord should not provide for its return.

Because they were successful in their claim for the cancellation of each notice to end tenancy, I find the tenant is eligible for the return of the Application filing fee. I grant a monetary order to the tenant for this amount.

Conclusion

For the reasons above, I order each notice to end tenancy issued by the landlord is cancelled.

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

Dated: June 16, 2021

Residential Tenancy Branch