



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;
- an order to allow the tenants to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 63; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

MG, counsel, appeared with the landlord MB, and represented the landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlords duly served with the tenants' Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenants acknowledged receipt of the 1 Month Notice to End Tenancy for Cause dated March 31, 2021. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the 1 Month Notice on April 3, 2021, 3 days after posting.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order for the landlords to comply with the *Act*?

Are the tenants entitled to an order to suspend or set conditions on the landlords' right to enter the rental units?

Should the tenants be given authorization to change the locks to the rental unit?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on September 1, 2020, with monthly rent currently set at \$1,200.00, payable on the first of the month. The landlords collected a security deposit in the amount of \$600.00, which the landlords still hold.

On March 31, 2021, the landlords served the tenants with a 1 Month Notice to End Tenancy for Cause citing the following grounds:

1. The tenants have allowed an unreasonable number of occupants in a rental unit.

The landlords served the tenants with the 1 Month Notice after the tenants had refused to sign an amendment dated March 21, 2021 limiting the tenants' adult son's visits and stays at the home. The landlords feel that the tenants had mislead them when applying to rent the basement suite, and state that the monthly rent was for two adults only. The landlords submitted documentation to show that the tenants' adult son spent a considerable amount of time at the home which included every weekend from Friday to Monday, which the landlords feel have caused them extreme stress. The landlords believe that the tenants' son's behaviour poses a risk to the landlords and their property. The landlords are also concerned about the significant increase in utility costs, which the landlords feel have increased by thirty percent. The landlords submitted copies of their hydro bills in their evidentiary materials.

The tenants do not dispute that their adult son does visit and stay with them, but that this was not done in contravention of the *Act* and tenancy agreement. The tenants feel that the landlords have deprived them of their right to have their son visit as a guest, and of their right to quiet enjoyment of the rental unit. The tenants submitted evidentiary materials to show that their son is a guest, and has his own accommodation. The tenants requested that the 1 Month Notice be cancelled.

The tenants testified that the landlords have restricted the tenants' access to facilities that were originally included as part of the tenancy, including the parking space and laundry facilities. The tenants are also concerned that the landlords would enter the rental unit without proper notice or reason to do so. The tenants requested orders allowing them authorization to change the locks to ensure their privacy and quiet enjoyment, and also an order to suspend or set conditions on the landlords' right to enter the rental unit. The tenants also requested an order that the landlords comply with the *Act* and tenancy agreement, including the tenants' right to quiet enjoyment of the rental unit.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlords have the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

In this case, the landlords stated on the 1 Month Notice that the tenants have allowed an unreasonable number of occupants in the rental unit, specifically the tenants' adult son, who frequently has overnight stays at the rental unit.

Section 9 of the **Residential Tenancy Regulation Schedule** states the following about occupants and guests:

Occupants and guests

- 9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Section 30 of the *Act* states the following about the unreasonable restricting of access to the rental unit to a person permitted on the property by the tenants:

Tenant's right of access protected

30 (1)A landlord must not unreasonably restrict access to residential property by

(a)the tenant of a rental unit that is part of the residential property,
or

(b)a person permitted on the residential property by that tenant.

(2)A landlord must not unreasonably restrict access to residential property by

(a)a candidate seeking election to the Parliament of Canada, the Legislative Assembly or an office in an election under the [Local Government Act](#), the [School Act](#) or the [Vancouver Charter](#), or

(b)the authorized representative of such a person who is canvassing electors or distributing election material.

In light of the testimony and evidence before me, I am satisfied that the tenants' son is a guest of the tenants. I find that the landlords have attempted to restrict access to the tenants' rental unit to the tenants' son contrary to the Residential Tenancy Regulation and the *Act*. Although the landlords have expressed concern about the impact of these visits, including the increase in hydro costs, I am not satisfied that the landlords have met the burden of proof to support that the tenants have allowed an unreasonable number of occupants in the rental unit. The increase in hydro costs as highlighted by the

landlords could be attributed to many factors, including the use of facilities that are included in the monthly rent such as the use of heat or laundry. I am not satisfied that the landlords have provided sufficient evidence to support that these visits are primarily responsible for the increase. I find that the landlords have not met the burden of proof to support that this tenancy should end on the grounds provided on the 1 Month Notice, specifically that the tenants have allowed an unreasonable number of occupants in the rental unit. Accordingly, I allow the tenants' application to cancel the 1 Month Notice dated March 31, 2021. The tenancy will continue until ended in accordance with the *Act*.

As I find that the landlords have attempted to impose restrictions in contravention of the *Act* and Regulation, I order that the landlords comply with the *Act* and Regulation as set out above in relation to the tenants' right to have guests, including the tenants' son, unless the landlords are in possession of an Order allowing them to restrict such access.

Section 27 of the *Act* states the following about the termination or restricting of services or facilities:

Section 27 Terminating or restricting services or facilities

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) that laundry facilities and parking are considered qualifying **services or facilities as** stipulated in the **Definitions** of the *Act*.

I find that the landlords have attempted to restrict or set conditions on the tenants' access to the use of these services and facilities. I order that the landlords provide the tenants with the same level of access to these services as facilities as they had at the beginning of this tenancy, or provide the tenants with a reduction in rent equivalent in

the value of the tenancy agreement resulting in the termination or restriction of the service or facility in accordance section 27(2)(a) and (b) of the *Act*.

I accept the landlords' explanation for why they had entered the tenants' rental unit. I do not find it necessary to impose any restrictions or set any conditions at this time, nor do I find it necessary for the locks to be changed. I do, however, remind the landlords of their obligations under section 29 of the *Act* which prohibits the landlords' right to enter the rental suite except with proper notice or the tenants' permission.

The landlords' right to enter a rental unit is restricted, and the landlords must not enter unless:

- (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.

I allow the tenants' application to recover the \$100.00 filing fee from the landlords. The tenants may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice and recover the filing fee for this application. The landlords' 1 Month Notice to End the Tenancy dated March 31, 2021 is cancelled and is of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I order that the landlords comply with the *Act* and Regulation as set out above in relation to the tenants' right to have guests, including the tenants' son, unless the landlords are in possession of an Order allowing them to restrict such access.

I order that the landlords provide the tenants with the same level of access to services as facilities as the tenants had at the beginning of this tenancy, or provide the tenants with a reduction in rent equivalent in the value of the tenancy agreement resulting in the termination or restriction of the service or facility in accordance section 27(2)(a) and (b) of the *Act*.

I do, remind the landlords of their obligations under section 29 of the *Act* which prohibits the landlords' right to enter the rental suite except with proper notice or the tenants' permission.

I allow the tenants to implement a monetary award of \$100.00 for the filing fee by reducing a future monthly rent payment by that amount.

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: August 12, 2021

Residential Tenancy Branch