



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on June 30, 2021, for a monetary order for compensation, for an order for the Landlord to comply with the Act, and to recover their filing fee for this application. The matter was set for a conference call.

The Landlord, the Landlord’s property Manager (the “Landlord”) and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matter

At the outset of these proceedings, the Landlord and Tenant agreed that this tenancy ended on October 15, 2021, and that the Landlord took back possession of the rental unit on that same day.

Therefore, as this tenancy has already ended before the date of these proceedings, I find that there is no need to determine the validity of the Notice before me or to order the Landlord to comply with the Act during this tenancy. Consequently, I am dismissing the Tenant's claims for an order for the Landlord to comply with the *Act* and to cancel the Notice issued on June 30, 2021.

I will continue in these proceedings on the remaining issue in the Tenant's application for a monetary order for compensation and to recover their filing fee for this application.

Issues to be Decided

- Is the Tenant entitled to a monetary order for compensation under the *Act*?
- Is the Tenant entitled to recover their filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified the Landlord harassed them by serving them with a notice to end their tenancy. That the Landlord had made untrue claims against them in the notice and that due to the notice being issued and the untrue claims about them, they were due compensation for harassment, stress, and risk. The Tenant testified that they are requesting \$5,340.00; consisting of \$1,780.00 in the equivalent of two months rent for issuing a notice to end tenancy, \$890.00 for harassment, \$890.00 for stress, \$890.00 for defamation of character, and \$890.00 in risks due to moving during the covid-19 pandemic.

The Tenant was requested to provide further details of their claim, including what the Landlord had done to breach the *Act*. The Tenant testified that the Landlord should not have issued a One-Month Notice to end tenancy for cause because they had not done the things the Landlord had accused them of in the Notice.

Analysis

Based on the above oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

The Tenant is claiming for compensation in the amount of \$5,340.00; consisting of \$1,780.00 in the equivalent of two months rent for issuing a notice to end tenancy, \$890.00 for harassment, \$890.00 for stress, \$890.00 for defamation of character, and \$890.00 in risks due to moving during the covid-19 pandemic. Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.”

In order to determine if the Tenant is entitled to compensation, I must first determine if there had been a breach of the *Act* by the Landlord in not paying compensation as required under the *Act* and in how they have handled the end of this tenancy.

I will first address the Tenant’s request for \$1,780.00, the equivalent of two months’ rent for issuing a notice to end tenancy. I accept the testimony of these parties that the Landlord issued a One Month Notice to End Tenancy for Cause on June 30, 2021. Section 47 of the *Act* states the following regarding a One Month Notice to end tenancy:

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:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

- (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];*
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;*
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;*
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:*
 - (i) the date the tenant receives the order;*
 - (ii) the date specified in the order for the tenant to comply with the order.*

(2) A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and*
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) must vacate the rental unit by that date.*

I have reviewed section 47 of the *Act* and find that no compensation is due to a tenant when they received a notice to end tenancy for cause pursuant to section 47 of the *Act*. Therefore, I find that the Landlord has not breached the *Act* by not paying compensation with this Notice, and I dismiss this portion of the Tenant's claim.

As for the remaining \$3,560.00 of the Tenant's claim for compensation, consisting of \$890.00 for harassment, \$890.00 for stress, \$890.00 for defamation of character, and \$890.00 in risks due to moving during the covid-19 pandemic, I have reviewed the totality of the Tenant's application, testimony and documentary evidence and I find that this remainder of the Tenant's claim for compensation is based on the fact that the Landlord had issued a notice to end their tenancy. Section 44 of the *Act* sets out the right of a landlord to issue a notice to end a tenancy, stating the following;

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Based on section 44 of the *Act*, I find that the Landlord had the right to issue a notice to end this tenancy. Additionally, I also find that the tenant had failed to provide sufficient evidence to satisfy me that the Landlord breached the *Act* in any way when they issued this notice or in the manner in which they issued this notice. Consequently, I find that the Tenant has failed to prove a breach of the *Act* by the Landlord, and I therefore must dismiss the remainder of the Tenant's claim for compensation in its entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their claim, I find that the Tenant is not entitled to the recovery of their filing fee for this application.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: November 10, 2021

Residential Tenancy Branch