



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes CNC, OLC, MNDCT, FFT
 OPR, OPC, FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants and an application made by the landlord.

The tenants have applied for an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for an Order of Possession for unpaid rent or utilities; an Order of Possession for cause; and to recover the filing fee from the tenants.

The landlord attended the hearing with a person to assist with paperwork, who did not testify or take part in the hearing. All 3 tenants also attended, although 2 did not take part in the hearing. The landlord and one of the tenants each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

During cross-examination by the landlord, the tenant's telephone lost connection.

During the course of the hearing the landlord advised that none of the text messages, emails or photographs provided as evidence for this hearing were provided to the tenants. Any evidence that a party wishes me to consider must be provided to the other party. Since the landlord has failed to do so, none of the text messages, emails or photographs of the landlord are considered in this Decision.

All other evidence has been reviewed and is considered in this Decision.

Also, during the course of the hearing the landlord withdrew the application for an Order of Possession for unpaid rent or utilities, and I dismiss that portion of the landlord's application.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated August 15, 2021 was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically with respect to laundry facilities and mail?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use of laundry facilities and mailbox?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 1, 2017 reverting to a month-to-month tenancy after August 31, 2018 and the tenants still reside in the rental unit. Rent in the amount of \$1,100.00 is payable on the 1st day of each month and there are no rental arrears. Prior to the commencement of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resides in the upper level of the home.

A copy of the tenancy agreement has been provided for this hearing, which is signed by a landlord and 2 of the 3 tenants. It specifies the name and address and phone numbers of the landlord, the anticipated possession date and term, amount of rent and security deposit. It also shows the total number of people, and states: "Laundry max 3 loads (washer only) and basic cable included. No pets/smoking allowed, no oil leaking cars allowed in the driveway, property check every month, no parties, rent on first date of each month, no lights on during daytime, no opening windows during winter, no baby-sitting, rent will increase for every new member added, \$200 will be charged from

damage deposit if suite left messy, at least one month notice to empty the suite by tenant, but the owner can give notice any time if the agreement form has not followed.”

On August 15, 2021 the landlord served the tenants with a One Month Notice to End Tenancy for Cause (the Notice) by putting it under the laundry door, which is always locked and only opened by the landlord when the tenants need to access the laundry room. A copy of the Notice has been provided for this hearing and it is dated August 15, 2021 and contains an effective date of vacancy of September 15, 2021. The reason for issuing it states: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The Details of Cause(s) section states: “1st written message sent on March 7/21 @ 2 pm; 2nd notice May 16/21 @ 1:04 pm; 3rd notice Aug 9/21 @ 9:21 am.”

The landlord testified that the breach was doing more loads of laundry than permitted by the tenancy agreement. The tenants’ laundry room is open on Sundays at 6:00 a.m. before the landlord goes to work, and tenants can do up to 3 loads, but they do 5 or 6 loads and argue with the landlord about that. The landlord gives 3 hours of time for laundry, but was watching them, and sent text messages on March 7 and May 16. On March 7 the landlord opened the room at 2:00 p.m. and the laundry was still running; the landlord cannot afford that. On May 16 the landlord reminded the tenants again of overuse of the laundry facilities. The landlord advised that if the tenants wanted to do more laundry the landlord would have to increase the rent, and that the landlord’s water bill has gone up. But the tenant said there was a rent freeze.

The landlord also served another One Month Notice to End Tenancy for Cause (the 2nd Notice) and a copy has been provided for this hearing. It is dated October 28, 2021 and contains an effective date of vacancy of November 30, 2021. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause(s) section states: “10 days notice was served on Sep 2/21 for not paying rent on time. Landlord called 911 on Aug 22, 2021 @ 1:48 pm because tenant (J)

was verbally & physically aggressive. Windows left open on Oct 12 & Oct 16 when temperature was low & cold & rainy outside. Sept 6/2021 @ 6:58 pm kept ringing front door bell & forcefully knocking the door. Interfering with other tenants."

The main reason for issuing the 2nd Notice is that other tenants in the rental home gave the landlord a written statement on September 5, 2021 stating that a male tenant had been standing at the window of 2 other female tenants disturbing their privacy. They were really upset. One of the females asked if the tenant wanted anything but he didn't answer. The letter is from a male tenant who lives with the 2 female tenants, and advised that he had witnessed it.

With respect to repeated late rent, the landlord testified that rent is usually paid through the laundry door. The most recent late payments of rent were on September 3, 2020; January 5, 2021; March 4, 2021; April 4, 2021; May 2, 2021; June 6, 2021 and July 4, 2021. When the tenants do laundry on Sundays, they leave the rent cheque by the laundry machine. The landlord has called to remind them to pay the rent, and then they pay. The landlord doesn't want them to pay face-to-face due to the pandemic, so they started to pay in the laundry room.

On August 22 the landlord was making a video of the laundry running. When the landlord finished the video one of the tenants ran at the landlord. When the landlord went inside and closed the door, the tenant was kicking the door and the machine and screaming calling the machine a piece of junk. When the tenant pulled the door to try to open it, the landlord called 911 fearful of safety for the landlord and the landlord's kids. Police told the tenants to not have any face-to-face contact with the landlord in the future.

Then on September 6 at 7:00 p.m. 2 of the tenants came to the main door knocking forcefully and ringing the doorbell. The landlord did not open the door, thinking they would cause more problems and does not know why they were there. The landlord works full time and has kids who were scared, and now the landlord can't leave them alone and has a grandmother of the kids attend.

The tenants have multiple visitors, which is not a problem, but they continue to park in the landlord's driveway. The landlord gave the tenants a written message, but they didn't listen, parking 2 visitors' cars there, and a brother of one of the tenants every weekend. The landlord told the tenants that guests can park on the street.

The tenancy agreement specifies no vehicles in the driveway that leak. One of the tenants argued with the landlord about a leaking car and refused to see it. The tenancy

agreement also states that the tenants are not to leave windows open in winter, which causes demand for the boiler and increase in gas and electric bills. On October 12, 2021 at 8:03 a.m. and at 6:34 a.m. on the 16th windows were opened at night and closed during the day. The landlord checked the windows in the morning.

The tenants have caused a lot of stress on the landlord and family. The landlord is a nurse working 12 hours per day and is worried about the safety of the kids, who do not feel safe going outside.

The landlord also served a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided by the tenants. It is dated May 27, 2021 and contains an effective date of vacancy of August 31, 2021. None of the reasons for issuing it have been provided. The landlord testified that it was a reminder because the tenants said they would move out in 3 months, at the end of August.

The tenant testified that the notices to end the tenancy given by the landlord are not true and in bad faith. The landlord is harassing the tenants so rent can be raised. Sometime last year in the summer, during a rent freeze, the landlord asked the tenants to increase the rent, and the tenant told the landlord to put it in writing, but the landlord refused.

Since then, in a text message in March, the landlord said the tenants could only do 2 loads of laundry and utilities had increased but never showed a copy of a bill. A copy of the text message has been provided for this hearing, wherein the landlord states that from now on, the landlord will only open the laundry room from 9 am to 11 am. The landlord came with an empty envelope last year, but never took anything out of the envelope or showed the bill.

On June 23, 2021 the landlord told the tenants that new tenants would be moving in on September 1, 2021. On August 9, 2021 the landlord sent another text stating that since the tenants would be moving out, the landlord had re-rented, but the tenants never said they were moving out. The tenant's mother asked the landlord if she could do laundry, 3 loads peacefully, but the landlord asked her to sign a paper stating that the tenants would move out in September, but the tenants didn't want to. The landlord had it ready and said that if the tenants signed it, they could do laundry.

With respect to the allegation of repeated late rent, the tenant didn't want her father to contract COVID due to vulnerability, and last year when COVID happened, the tenants asked if rent could be paid by putting it in the laundry room and the landlord agreed, knowing that the tenants had been good about paying rent for the previous 2 years.

Copies of rent cheques have been provided as evidence for this hearing. The rent was always in the laundry consistently on Sundays and no notice about that was received until September. The landlord handed a Notice to the tenant on September 3, 2021 along with mail that the landlord had been hanging onto for a couple of weeks. The tenant texted the landlord saying the cheque was in the laundry room and asked the landlord to reply. The landlord replied that the tenants need to move out by September 15. No mail was given to the tenants from August 22 to September 3.

The landlord has said that the landlord prefers to talk to the tenant who testified in this hearing, and now says the tenant is aggressive and that the landlord's kids are in danger, and then allowed the tenants more time to move out.

The landlord has also alleged that the tenant's brother parked his car in the driveway on November 19 and 26, which is fabricated. The brother started a new job on November 15, so that's not possible. The landlord alleged that another brother parked in the driveway on October 23, but he put his car in storage on October 8. A photograph of a license plate has been provided for this hearing, and it shows that the insurance expired on October 9, 2021.

The tenants do not know the other tenants in the rental home and has never talked to them. The tenant's dad was in hospital from November 16 to December 1, 2021. The tenant never heard about an allegation of him looking in windows until receiving the landlord's application in November, but the letters provided by the landlord are dated September 5, 2021.

The tenants have also provided a list of text messages sent to the landlord in September, 2021 asking the landlord to open the laundry door, and advising the landlord that the rent cheque for October is in the locked mailbox, and the rent cheque for November is in the locked mailbox. The list also requests the landlord to turn the temperature down because the tenants cannot tolerate the heat, and asking that the temperature be turned on during the day and then down at night.

Numerous laundry receipts have been provided for this hearing. The tenants have also provided a Monetary Order Worksheet setting out the following claims, totaling \$1,010.20:

- \$109.00 for laundry costs for September;
- \$114.00 for the month of October;
- \$91.00 for the month of November;
- \$91.00 for the month of December;

- \$168.40 for mail forwarding for the month of October;
- \$168.40 for mail forwarding for November;
- \$168.40 for mail forwarding for December; and
- \$100.00 for recovery of the filing fee.

Each of the amounts includes the cost of doing laundry outside of the home as well as estimates for the tenants' time, gas costs and wear and tear on their vehicle.

A second Monetary Order Worksheet has also been provided totaling \$548.10:

- \$66.15 for renting a postal box for 3 months, being \$63.00, plus tax;
- \$47.25 for mail box keys;
- \$100.80 per month for time and gas and wear and tear on the tenant's vehicle;
- \$166.95 estimate for a postal box for November; and
- \$166.95 estimate for a postal box for December.

Receipts for mail forwarding have been provided for this hearing, as well as a letter from the tenants to the landlord dated September 16, 2021 stating that a lock was put on the mailbox and despite trying to reach the landlord, who would not answer the phone or front door, and requests a key to the mailbox by September 26.

The tenants seek orders cancelling the notices to end the tenancy, an order that the landlord comply with the *Act* and the tenancy agreement with respect to laundry and mail, and monetary compensation in the amount of \$1,658.30 for off-site laundry costs and mail forwarding and recovery of the filing fee.

Analysis

Firstly, all of the landlord's evidence is photographs of something. As previously stated, since the landlord has not served the tenants with copies of the photographs or text messages, none can be considered in this Decision.

The tenancy agreement does not contain the standard terms as required by the *Residential Tenancy Act*. Further, the *Act* requires that any additional terms must not be contrary to the *Act*. No parties, no lights on during the day, no windows open during winter, no baby-sitting, rent increases for every new tenant, \$200.00 will be charged from the damage deposit if the suite is left messy are contrary to the *Act*. Further, a term that requires a tenant to give at least 1 months notice to vacate is not contrary to

the *Act*, but “the owner can give notice any time if the agreement form has not followed,” is not a term sanctioned by the law.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause dated August 15, 2021 and the One Month Notice to End Tenancy for Cause dated October 28, 2021. Although they are different versions, I find that they are in the approved form and contain information required by the *Act*. The reasons for issuing them are in dispute.

With respect to a breach of a material term of the tenancy agreement, which is contained in both of the Notices, the landlord testified that the tenants did more than 3 loads of laundry, kept windows open in October, and leaking cars in the driveway. The rental unit is the tenants' home. Laundry is included in the rent, regardless of the amount of laundry done by the tenants. Further, if the tenants want to open a window, regardless of the time of year, a landlord may not restrict that. The tenant disputes that any vehicles belonging to guests have left oil marks in the driveway. The landlord has not provided any evidence to support the landlord's claim that oil spots on the driveway were caused by the tenants or their guests.

With respect to repeated late rent, the landlord made arrangements with the tenants to pay the rent by placing a cheque in the laundry room. The landlord also testified that the first One Month Notice to End Tenancy for Cause was served to the tenants by placing it in the laundry room. The parties also agree that due to COVID, and on recommendation of police, that method was preferable to avoid face-to-face contact. Laundry days are Sundays and the landlord keeps the laundry room locked. The landlord has caused rent to be paid late, and I do not accept that as a reason to end the tenancy.

The landlord did not provide any testimony with respect to how or when the 2nd One Month Notice to End Tenancy for Cause was served.

The landlord testified that the male tenant has bothered 2 other female tenants by standing outside their window. The landlord also testified that they gave a written statement about that after September 5. The tenant testified that there was no mention to the tenants about that at all and only learned of it from the landlord's application that is subject of this hearing. The landlord has not satisfied me that the incidents occurred at all, and there is no evidence to support that.

A landlord may not give any type of notice to end a tenancy to “remind” tenants that they need to move out. The *Residential Tenancy Act* specifies how a tenancy ends, and there is no evidence before me that the tenants agreed or even mentioned moving out or that any “reminder” was warranted. Given that the landlord has served the tenants with a Two Month Notice to End Tenancy for Landlord’s Use of Property, which does not contain any reason for issuing it, I cancel it.

The landlord also issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2021 effective September 15, 2021 for unpaid rent in the amount of \$1,100.00 that was due on September 1, 2021. September 5, 2021 was a Sunday, when rent is paid in the laundry room. Once such a notice is issued, the tenant has 5 days to pay the rent, in which case the Notice is of no effect. The landlord has not indicated when rent was paid, and I cancel it.

I have reviewed all of the letters, text messages and other evidence of the tenants. It is very clear in the evidence that the landlord wants the tenants to move out and clearly so that rent can be increased.

A landlord may not restrict or remove a facility or a service. If the landlord cannot afford the water bills or other utilities, that is not the problem of the tenants. I also accept the undisputed testimony of the tenants that mail has been withheld. I order the landlord to comply with the *Residential Tenancy Act* by refraining from locking the laundry room door unless the landlord provides a key to the tenants. I further order the landlord to comply with the *Act* by providing a mailbox key to the tenants immediately.

With respect to the tenants’ monetary claim, in order to be successful the tenants must be able to establish that a loss has been suffered as a result of the landlord’s failure to comply with the *Act* or the tenancy agreement, the amount of the loss and what efforts the tenants made to mitigate any damage or loss suffered. In this case, the tenants claim gas expenses and wear and tear on a vehicle or number of vehicles for doing laundry off-site and mail. The tenants’ claim of wear and tear as well as gasoline expenses have not been proven. However, the tenants have provided receipts for laundry and for mail. The tenants have also provided text messages and letters to the landlord seeking to reinstate laundry and for mail delivery, and I find that the tenants have mitigated, and are entitled to the receipted amounts of \$138.00 for laundry and \$91.14 for mail forwarding. The tenants have not provided receipts for rental of a postal box.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I hereby grant a monetary order in favour of the tenants as against the landlord in the amount of \$329.14 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The Two Month Notice to End Tenancy for Landlord's Use of Property dated June 22, 2021 is hereby cancelled and the tenancy continues.

One Month Notice to End Tenancy for Cause dated August 15, 2021 is hereby cancelled and the tenancy continues.

The One Month Notice to End Tenancy for Cause dated October 28, 2021 is hereby cancelled and the tenancy continues.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2021 is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with the *Residential Tenancy Act* by providing the tenants with a mail key, and a laundry key immediately. The landlord may not restrict windows being left open by the tenants.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$329.14** and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: December 29, 2021

Amended January 24, 2022

Residential Tenancy Branch