



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

The hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated November 1, 2021 ("1 Month Notice") pursuant to section 47;
- an order that the Landlord comply with the Act, Residential Tenancy Regulations ("Regulations") and/or the tenancy agreement; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72(1).

The Landlord did not attend this hearing. I left the teleconference hearing connection open while the phone system was monitored for the entire hearing to enable the Landlord to call into this teleconference hearing which scheduled for 9:30 am. One of the Tenants ("YC") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that YC and I were the only ones who had called into this teleconference until the hearing ended at 9:53 am.

YC testified he served that the Landlord with the Notice of Dispute Resolution Proceeding ("NDRP") by registered mail on November 6, 2021. YC provided a Canada Post receipt with the tracking number confirming the NDRP was served by registered mail on the Landlord. I find that NDRP was served on the Landlord in accordance with section 89 of the Act.

YC testified that the Tenants did not receive any evidence from the Landlord.

Preliminary Matter – Removal of Infant Child as Applicant

At the outset of the hearing, YC stated that the third applicant was the other Tenants' infant daughter ("PC"). YC made a request for an amendment to remove PC as an applicant in the Tenants' application.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states ("RoP"):

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Landlord could have reasonably anticipated a request for the removal of an applicant who is an infant child, I amended the Tenants' application to remove PC as an applicant.

Preliminary Matter – Addition of Rental Unit Number

I noted the rental address appeared to be a residential apartment block but that the Tenants' application only provided a street address. YC stated that he tried to include the rental unit number in the online application but he was unable to insert it. YC requested I add the rental unit to the rental address of his application.

As the Landlord could have reasonably anticipated a request for the addition of the rental unit number to the rental address, pursuant to Rule 4.2 of the RoP, I amended the Tenants' application to include the Tenants' rental unit.

Preliminary Matter – Landlord’s Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

As such, even though this is the Tenant’s application, the Landlord bears the evidentiary burden to prove that the 1 Month Notice was issued for valid reasons. As the Landlord failed to attend the hearing, I find that the Landlord has failed to discharge this evidentiary burden. Accordingly, I cannot find that the 1 Month Notice is valid.

As such, I grant the Tenants’ application and cancel the 1 Month Notice. The tenancy will continue until ended in accordance with the Act.

Preliminary Matter – Claim for Landlord to Comply with Act

During the hearing, YC explained that he was seeking to have the Landlord comply with the BC *Human Rights Code* (“Code”) in respect of the discriminatory conduct by the Landlord in relation to attempting to evict the Tenants on the basis of having a child. I advised YC that the director of the Residential Tenancy Branch (“RTB”) does not have jurisdiction to enforce the provisions of the Code and that, if he wanted to pursue a claim under that legislation, he should make inquiries of the BC Human Rights Commission. As the director of the RTB has no jurisdiction under the Code, I dismissed the Tenants’ claim, without leave to reapply, that the Landlord comply with the Act Regulations and/or tenancy agreement.

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*.

Preliminary Matter – Reimbursement of Tenants' Costs of Application

As the Tenants have been successful in this application, I grant the Tenants recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenants are allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenants.

Conclusion:

I cancel the 1 Month Notice and the tenancy will continue until ended in accordance with the Act.

The Tenants are authorized to recover the filing fee by deducting \$100.00 from the next month's rent and notifying the Landlord when this deduction is made.

Dated: January 9, 2022

Residential Tenancy Branch