



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both the tenant and the landlord.

Both parties acknowledged receipt of each others evidence. However, there was some confusion as to whether or not the landlord could access any electronic evidence provided on USB sticks. In the end both parties confirmed they were prepared to proceed with the submissions as they were.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on April 2, 2019 for a month to month tenancy beginning on April 1, 2019 for a monthly rent of \$750.00 due on the first of each month;
- A copy of a One Month Notice to End Tenancy for Cause issued by the landlord on September 28, 2021 with an effective vacancy date of October 31, 2021 citing the tenant or a person permitted on the property by the tenant 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 and put the landlord's property at significant risk and the tenant or a person permitted on the property by the tenant has engaged in an illegal act that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. In the Details of Events, the landlord wrote:

“Tenant has forcing other tenants to sign Papers against Landlord which reasons doesn't exist according to her thoughts. Other tenants never complained any issues which Miss. Brooks.

Tenant wants renovations of her room which she already seen before moving in April 1st, 2019. I checked with city of Vancouver of her room can be renovate which is not possible according to the old law. Therefore, Landlord already planed to rebuild this house. Tenant complanlng this room isn't good fit for living so she should moveout because there ls no ulternate for this room.

Tenant never shares cleaning service on her turn since she moved in the house (cleaning washroom and common area in the house)

Tenant complaining that mice coming in the house but she opens the patio door and left opened never closed until dark outside which brings the mice inside the house. There is main door should be use to go in or out from the house no reason to use potio door.

Tenant complaining front door loked both sides. Other tenants concerned sometime people have guest in the house and when they leave from the house they don,t locked the door so this was the only choice to locked both sides so they don't leave the door unloked. The issue can only be resolved if tenant find better place that will be good fit for tenant.” [reproduced as written]

The landlord submits that the tenant also tries to get the other occupants of the residential property. The landlord submits that the tenant complains too much about the

property and that she is the only one who complains. She also testified that the tenant is the only tenant who does not complete her cleaning chores and that the other occupants complain about her failure to do so. The landlord has provided no documentary evidence to support her position that the other occupants of the residential property have lodged any complaints, specifically against the tenant.

Analysis

Despite this Application being submitted by the tenant seeking to cancel the Notice to End Tenancy, the burden rests with the landlord to provide sufficient evidence to establish she has cause to end the tenancy pursuant to the relevant section of the *Act*.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. 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.

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, that rent is payable under the tenancy agreement.

Section 47(4) allows a tenant to dispute a notice under Section 47 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. The tenant received the Notice to End Tenancy on September 28, 2021. As such, I find the tenant had until October 8, 2021 to submit an Application for Dispute Resolution seeking to cancel the One Month Notice. The tenants' Application was submitted on October 8, 2021. I find the tenant filed her Application within the required time frame.

I first note that the landlord has provided no evidence or submissions as to what illegal activity she alleges the tenant or a person permitted on the property has engaged in. As such, I find the landlord has failed to establish this as a cause to end the tenancy.

Secondly, the bulk of the landlords "causes" to end the tenancy, as outlined in the "Details of Event(s) section of the Notice to End Tenancy relate to the tenant lodging complaints about the rental unit and or residential property. In fact, four of the six issues identified in the Details of Event(s) section are because the landlord is complaining the tenant complains too much.

I note that it is the job of a landlord to receive; investigate; and follow up on complaints lodged by their tenants who pay them rent for the provision of a rental unit that is compliant with health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Additionally, a landlord is also responsible to receive; investigate; and follow up on complaints lodged by their tenants who pay them rent exclusive possession of their rental units and use of common areas for reasonable and lawful purposes, free from significant interference.

As such, I find for the landlord to attempt to end the tenancy because she is tired of dealing with the tenant's complaints is absolutely ludicrous. If the landlord doesn't want to deal with complains from tenants she has several choices, including no longer being a landlord and/or making the repairs that are necessary to ensure that she lives up to her obligations as a landlord.

As to the issue of the landlord's assertions that she is receiving complaints from the other occupants of the property, she has provided absolutely no evidence of that. While she has provided some text messaging from other occupants, I find they are not complaints at all but rather, at least in one case, she was complaining to one other occupant that he wasn't doing his share of cleaning.

The landlord's evidence of the tenant not doing her share of cleaning and/or taking the garbage out of the residential property is either non-existent or is so old that it is too late for her to rely on those reasons for end the tenancy now.

As a result, I find the landlord has failed to establish she has cause to end the tenancy.

Conclusion

Based on the above, I grant the tenant's Application for Dispute Resolution and cancel the One Month Notice to End Tenancy for Cause issued by the landlord on September 28, 2021 and the tenancy remains in full force and effect until ended in accordance with the *Act*.

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: February 17, 2022

Residential Tenancy Branch