



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented at the hearing by his son, SS, acting as the landlord’s agent (hereinafter referred to as the “landlord”). As both parties were present, service of documents was confirmed. The landlord acknowledged being served with the tenant’s Notice of Dispute Resolution Proceedings package on October 6th or 7th however testified that the tenant did not serve him with any evidence. The landlord testified that he contacted the Residential Tenancy Branch to determine what to do and the information officer advised the landlord that it was the tenant’s responsibility to serve the landlord with the evidence.

The tenant testified that he served the landlord with the Notice of Dispute Resolution Proceedings, the Respondent Instructions for Dispute Resolution, and the dispute resolution process fact sheet (RTB-114) via social media application, Whatsapp on Friday December 31 at 5:40 p.m., then posted them to the landlord’s door on, what he believes was the same day, according to his testimony. The tenant was unable to recall specifically the date he served his evidence as he acknowledged he didn’t know he would be required to provide testimony regarding the date.

The tenant clearly testified he served the landlord with the Notice of Dispute Resolution Proceedings package by whatsapp, and I am satisfied it was sufficiently served in accordance with sections 89 and 90 of the *Act*. However, based on the conflicting testimonies of the parties, I am not satisfied the landlord was served with the tenant’s

evidence package and in accordance with Rule 3.5, the tenant's documentary evidence was excluded from consideration in this decision. Despite this, the tenant had full opportunity to provide testimony which would be used in this decision.

The tenant acknowledged being served with the landlord's evidence package and I advised the parties that I would admit it for use in this decision.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began in July of 2017 under a different tenancy agreement. The most recent tenancy agreement was signed with the tenant in February 2019. That fixed one year tenancy became month to month at the end of the one year. Rent is currently set at \$1,150.00 per month payable on the first day of each month. The tenant is current in paying his rent.

The landlord testified the rental unit is one of two unauthorized units on the lower level of a house. There is another lower unit occupied by unrelated tenants and an upper unit occupied by an unrelated family. In total, there are three rental units in the house, all tenanted.

On July 15, 2021, the city sent the landlord letter advising that upon inspection on June 29, 2021, it was revealed that a boarding, lodging or rooming house is operating at the residential property. The zoning bylaw allows for one family (not more than three unrelated non-transient persons living together) and up to two boarders in a dwelling unit. The city advised the landlord to bring the property into compliance by reducing the number of unrelated residents on or before September 30th.

Based on this letter, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause, however this was disputed and cancelled by an arbitrator. On September 13th, The arbitrator found that the Landlord only produced a warning letter

from their municipality which indicated that a zoning bylaw had been breached and that the letter doesn't constitute an order, pursuant to section 47(1)(k) of the *Act*.

On September 24, 2021, the landlord received another letter from the city, indicating the city's Zoning Bylaw permits only one legal secondary suite in a Single-Family Dwelling (SFD). The city's inspection discovered one family living in the upstairs and two unrelated people residing in each of the two unauthorized suites (4 unrelated people in total) on the lower/ground floor. The city sought the landlord's compliance and required the landlord to immediately reduce the number of unrelated residents to a maximum of two.

Based on this letter, the landlord served the tenant with a second notice to end tenancy on September 30, 2021, with the following reason for ending the tenancy stated: *Rental unit/site must be vacated to comply with a government order.* A copy of the September 30th letter was given to the tenant with the notice to end tenancy, according to the landlord. This notice to end tenancy was disputed by the tenant and forms the dispute before me today.

On December 7, 2021, the landlord received a third letter from the city regarding the "unresolved property misuse (boarding/rooming house)." In this letter, the property use coordinator for the city writes,

As the owner of the property, you are hereby ordered to bring the property into compliance with all City Bylaws. This order includes but is not limited to:

- *Immediately reduce the number of unrelated residents to a maximum of two.*
- *Comply with City of Burnaby Building Department Letter date 2021 July 02 directives.*

On December 31, 2021, the landlord served the tenant with a third notice to end tenancy for cause, stating the reason, "*rental unit must be vacated to comply with a government order*". A copy of the notice to end tenancy was provided. There is no signature of the landlord on the copy provided to me for this hearing, however both the landlord and the tenant testified that their copies bear the landlord's signature.

The landlord testified that the reason this tenant's tenancy had to end instead of the other downstairs unit is because the other unit is bigger, and that unit will be reconfigured and renovated to comply with the city's directive to make it an authorized

rental unit. It is possible the occupants of the other unit may be evicted; however the immediate concern is that the landlord has to comply with the order to have no more than three unrelated people in the residential property.

The tenant gave the following testimony. When the city came to inspect his rental unit on June 29, 2021, he had a guest staying with him which the city inspector misconstrued as a co-tenant. The city planned more inspections, on September 30 and November 8, however the city never showed up.

There are not 4 people living in the downstairs units. The tenant lives alone and there is a couple living in the other downstairs unit. Upstairs, the family has 6 people living there which is too many. The tenant's tenancy should not end because the suite he occupies is unauthorized. The tenant submits that the issue is miscommunication between the landlord, the city and himself. The city needs to come and inspect the property and the landlord needs to communicate better with the city.

The tenant acknowledges receiving the notice to end tenancy dated September 30 on September 30th and the notice to end tenancy dated December 31 on December 31st.

Analysis

Based on the testimony of the parties, I find the tenant received the notice to end tenancy dated September 30 on that date in accordance with sections 88 and 90 of the *Act*. The tenant filed to dispute the notice the same day he received it, within the 10 days required under section 47 of the *Act*. Although the tenant did not specifically dispute the December 31st notice, the parties are in agreement that it can be considered disputed as the elements of the notices to end tenancy are identical.

Section 47(1)(k) states that a landlord may end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. I find that on December 7, 2021, the municipality gave the landlord such an order, that the landlord *Immediately reduce the number of unrelated residents to a maximum of two.*

According to the letter dated December 07, 2021 from the property use coordinator, the Zoning Bylaw allows for one family (not more than three unrelated non-transient persons living together) and **up to two boarders** to reside in a dwelling unit. Therefore, the maximum number of unrelated persons residing there must not exceed five.

Based on the testimony of the parties, I understand that there are three sets of unrelated persons residing in the single-family dwelling. I accept that there is a family living upstairs, the tenant living downstairs and another couple living in the third unauthorized rental unit. Even if I were to accept the tenant's submission that he lives alone, the single-family dwelling would still contravene the municipality's bylaws as there would be **more than two boarders** residing in the dwelling unit, specifically the other couple plus the tenant in this proceeding.

I find that on December 07, 2021, the landlord has been served with a valid government order to immediately reduce the number of unrelated residents to a maximum of two and that in order to comply with the government order, the landlord must end the tenancy with the tenant pursuant to section 47(1)(k). Consequently, I uphold the landlord's notice to end tenancy issued on December 31, 2021.

Section 55 states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. I have examined the landlord's notice to end tenancy and find it complies with the form and content provisions as set out in section 52. Pursuant to section 55, the landlord is entitled to an Order of Possession.

The landlord asked that if I were to grant an Order of Possession that I make its effective date February 28, 2022. I accede to the landlord's request and grant the landlord an Order of Possession effective February 28, 2022.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective February 28, 2022. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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 11, 2022