



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, FFT, DRI, CNR, AAT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Section 46(1) of the Act;
3. An Order disputing a rent increase that is above the amount allowed by law pursuant to Section 43 of the Act;
4. An Order for the Landlord to allow access to the unit for the Tenants and/or their guests pursuant to Section 70 of the Act;
5. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
6. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and his legal counsel attended the hearing at the appointed date and time. The Tenants, LS and DS, also attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on November 8, 2021. The Tenants confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenants on November 8, 2021 pursuant to Section 88(a) of the Act.

The Tenants served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on November 16, 2021 (the "NoDRP package"). LS referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was served with the documents for this hearing five days after mailing them, on November 21, 2021, in accordance with Section 89(1)(c) of the Act.

The Landlord also personally served the 10 Day Notice on December 2, 2021. The Tenants confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was served on the Tenants on December 2, 2021 pursuant to Section 88(a) of the Act.

The Tenants filed an Amendment on December 6, 2021 which included disputing the 10 Day Notice. The Tenants personally served the Amendment on the Landlord on December 6, 2021. The Landlord confirmed receipt of the Amendment package. I find the Amendment was served on the Landlord on December 6, 2021 in accordance with Section 89(1)(a) of the Act.

Preliminary Matters

Related Issues

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on the application, the most urgent of which are the claims to cancel the One Month Notice and the 10 Day Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the One Month Notice and the 10 Day Notice, and the claim for recovery of the application filing fee at this proceeding. The Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Amend Application

RTB Rules of Procedure 4.2 allows for amendments to be made at the hearing. In the circumstances of this matter, it can be anticipated that the parties need assistance deciding a matter with respect to a rent reduction for loss of a facility that was previously included in the tenancy. 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. On this basis, I will amend the Tenants' application to include a claim to deal with the loss of the laundry facilities for the Tenants.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's One Month Notice?
2. Are the Tenants entitled to a cancellation of the Landlord's 10 Day Notice?
3. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
4. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed this periodic oral tenancy began on October 2, 2021. Monthly rent is \$1,200.00 for this two bedroom basement suite which is payable on the first day of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenants reported that the Landlord asked for the rent to be paid in cash. The Tenants asked for a receipt for the cash payment of the rent, but this has not been provided by the Landlord.

The Tenants testified that there are two basement suites in this residential property, the other family in the other one bedroom basement suite were a family of three people. Then there were five people living in the other basement suite, however, now there are four people.

The reasons for ending the tenancy on the One Month Notice are that the Tenants are repeatedly late paying rent and the Tenants have significantly interfered with or

unreasonably disturbed another occupant or the Landlord. Further details noted on the One Month Notice are:

1. Fight really loud at night
2. Took mail out of the mailbox (illegal)
3. Does not pay rent on time
4. Did not pay full amount for November
5. Fights with the landlord

The effective date for the One Month Notice is November 30, 2021.

The reasons for ending the tenancy on the 10 Day Notice are because the Tenants have failed to pay rent in the amount of \$1,150.00 + \$150.00-extra person = \$1,300.00 which was due on December 1, 2021. The effective date for the 10 Day Notice is December 12, 2021.

The Landlord's counsel submits that upon first meeting the Tenants, the Landlord understood, that it was only going to be the two Tenants. If LS' mother-in-law was also joining them, the verbal agreement was that the rent was to be \$150.00 more. The Tenants stated they needed a two bedroom unit because the mother-in-law would be living with them. When they first met the Landlord the rent amount was offered at \$1,300.00. The Tenants tried to convince the Landlord for an amount of \$1,100.00. The Landlord told the Tenants that that amount does not work for them. After discussing with her family, LS said they agreed to \$1,200.00 which included use of the laundry facilities. Tenant LS stated that the Landlord was informed about her mother-in-law who would also be residing in the rental unit, and the mother-in-law moved in sometime after the Tenants moved in. The Tenants object that there was a verbal agreement for an extra \$150.00 if the mother-in-law moved in.

On the Tenants' move in date, LS did one or two loads of laundry that night. The Landlord closes and locks the door to the laundry room. On October 9, LS did another load of laundry. She set the load dial to a heavy load and left it. LS states that possibly the Landlord touched the settings on the washing machine and the load restarted. The Landlord told LS that her laundry was taking too long and she should be using the normal setting on the dial. Before November 1, 2021 came around, the Landlord prevented the Tenants access to the laundry facilities. In November, the Tenants only paid \$1,100.00 for rent which they felt took into consideration that they no longer have

laundry facilities in the tenancy. Shortly after this lower payment, the Tenants were served with the One Month Notice.

The 10 Day Notice issued in December said the Tenants owe an additional \$150.00 for the mother-in-law that also resides in the rental unit. The Tenants maintained the Landlord did not provide a proper rental increase notice to the Tenants.

When the Tenants try to contact the Landlord to discuss the issues, the Landlord is often not available, or does not reply to the Tenants' phone messages or texts. The Tenants are asking for open communication, an email address so they can submit their rent via an e-transfer, and an emergency number in case it's needed.

The Landlord's counsel submits that the Landlord lives in the main dwelling upstairs. After a couple of weeks, the Tenants regularly use the laundry. The Landlord's counsel stated that the use of the laundry facilities is overuse and has caused issues with the machine, so the Landlord said to the Tenants that they cannot use the facilities. The Landlord did not provide 30 days' written notice to the Tenants of the termination of the laundry facilities. The Tenants have been going somewhere else to do their laundry. The Tenants unilaterally reduced the rent by \$100.00, but the Landlord says they will agree to a \$50.00 reduction.

The Landlord's counsel submits that the Tenants have domestic disputes between themselves and this is causing a nuisance. The Landlords called the police on January 15 and made a report. The Tenants spoke to the police when they came, but the police told them nothing was wrong. The Tenants said they were not fighting, but maybe were talking loudly.

The Landlord's counsel submits that the Tenants are taking all the mail from the mailbox and the Landlord has to go to the Tenants to ask for their mail. LS said they did not take any of the Landlord's mail. LS testified that the Landlord has never had to come to the Tenants for the Landlord's mail. In contrast, LS testified that she had been waiting for an important document from the Royal Bank of Canada, and after five days the Landlord gave Tenant LS her mail from the bank.

The following rent payments were made to the Landlord:

RENT	Date Paid	Rent/Partial Amount Paid
October 2021	---	\$1,200.00
November 2021	November 8, 2021	\$1,100.00
December 2021	December 2, 2021	\$1,100.00
January 2022	January 1, 2022	\$1,100.00

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

For the Tenants' benefit, Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 47 of the Act applies to the Landlord's One Month Notice. The relevant sections are:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(b) *the tenant is repeatedly late paying rent;*

...

(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,*

...

- (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.*

...

Section 53 of the Act enables incorrect effective dates to automatically change. As the One Month Notice was served on November 8, 2021, then the effective date for the One Month Notice is corrected to December 31, 2021 pursuant to Section 53(2) of the Act.

The RTB Policy Guideline #38 provides the policy intent of the Act in regard to repeatedly late rent payments. It states:

... a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be

considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Landlord served the One Month Notice after one late rent payment. One late rent payment would not fit the criteria of being repeatedly late paying rent, and at a minimum, three late rent payments are required to justify cause. I do not find that the Tenants are repeatedly late paying rent.

The Landlord testified to one incident of domestic dispute and called the police on January 15, 2022. When the police came and spoke with the Tenants, they did not find the situation warranted police intervention. The Tenants said they were not fighting; however, they may have been talking loudly. This police incident occurred after the One Month Notice was served on the Tenants. On a balance of probabilities, I do not find the one incident where the police were called, especially because it was after the One Month Notice was served, proves cause to end this tenancy. Cause must be established before service of the One Month Notice.

The Landlord claims the Tenants took the Landlord's mail out of the mailbox. The Tenants deny taking the Landlord's mail out of the mailbox, but also allege that the Landlord held some important mail of their own and delivered it to the Tenants several days after the letter would normally have reached them. The Tenants appear to be having a difficult time communicating with the Landlord. The Tenants seek additional information from the Landlord to help this relationship work better, but unfortunately they are not met with a like mind. I believe the Tenants have not taken or held the Landlord's mail, and in contrast, I believe the Tenants' testimony that the Landlord held the Tenants' mail. I find that the Landlord's testimony that the Tenants have taken their mail to not be credible. I do not find that these Tenants have caused a significant interference with or unreasonable disturbance to the other occupants or the Landlord. As the Landlord has not proven the claims in their One Month Notice, the notice is cancelled. The tenancy shall continue until it is ended in accordance with the Act.

Tenancy agreement is defined in the Act and means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to

occupy a rental unit. Despite this tenancy being an oral tenancy, the legislation applies to it.

This Act cannot be avoided

- 5** (1) *Landlords and tenants may not avoid or contract out of this Act or the regulations.*
- (2) *Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

The Tenants stated they were not provided with a formal notice of a rent increase. I find this oral tenancy is governed under the Act and that the Landlord cannot contract out of the Act's provisions as stated in Section 5.

In 2021, rent increases were frozen due to the *Emergency Program Act* and *COVID-19 Related Measures Act*. Current annual rent increase notices must have an effective date no earlier than January 1, 2022, and the maximum rent increase allowable is **1.5%**. In the Act, Part 3 – What Rent Increases Are Allowed, provides the Landlord with legislative guidance about rent increases. In the Residential Tenancy Regulation, Part 4 – Rent Increases, provides further information. Residential Tenancy Policy Guideline #37 deals with rent increases and provides more user-friendly reading to understand issues that are relevant to rent increases. As I find this tenancy is governed under the Act, I order that the Landlord must comply with the Act, and regulations in their conduct in this tenancy.

If the Landlord needs further one-on-one assistance, Information Officers in the RTB office can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602

This RTB website deals with rent increases:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases>

Section 46 of the Act deals with instances when rent is not paid. It states:

Landlord's notice: non-payment of rent

- 46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
- (a) pay the overdue rent, in which case the notice has no effect, or*
 - (b) dispute the notice by making an application for dispute resolution.*

...

The Landlord served the 10 Day Notice on the Tenants on December 2, 2021. The Tenants applied for dispute resolution of the 10 Day Notice on December 6, 2021 which is within the 5 days after receiving the notice pursuant to Section 46(4)(b) of the Act. I find the 10 Day Notice complies in form and content in accordance with Section 52 of the Act.

This tenancy is based on an oral tenancy agreement between the Tenants and the Landlord. The Landlord says there was a verbal agreement that the rent amount would increase \$150.00 for any extra person living in the rental unit. The Tenants object to the Landlord's statement that there was a verbal agreement between them that the rent would increase \$150.00 for any extra person living in the rental unit. When the Tenants were looking for a rental unit, they wanted a two bedroom suite as they needed the space for the mother-in-law. LS stated the Landlord knew that her mother-in-law would also be staying in the rental unit. I find the Landlord did know this fact, otherwise the Tenants would not have rented a two bedroom suite and would have only needed a one bedroom suite. The Landlord originally wanted \$1,300.00 for the rental unit, but later agreed with the Tenants to \$1,200.00 per month.

At the beginning of the tenancy, laundry facilities were included in the rent; however, shortly after the beginning of the tenancy, the Landlord took issue with the Tenants' use of the laundry facilities and took away access to those facilities from the Tenants. Pursuant to Section 27(2) of the Act, a landlord may terminate or restrict a service or facility, if the landlord (a) gives 30 days' written notice, in the approved form, of the

termination or restriction, and (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. The Landlord neither provided 30 days' written notice to the Tenants to terminate laundry facilities, nor reduced the rent an amount equivalent to the reduction in the value of this facility to the tenancy.

Policy Guideline #22 – Termination or Restriction of a Service or a Facility – helps parties understand issues that are likely to be relevant in this matter. I do not find laundry facilities an essential service or facility, but the Tenants entered this oral tenancy with the understanding that they had access to laundry facilities. The Landlord has completely taken away these facilities from the Tenants' use without an equivalent reduction in the rent. The Policy Guideline states:

*If the tenancy agreement doesn't state who is responsible for any added service or facility, not provided by the tenant, after the commencement of the tenancy, and there is a cost involved in obtaining the service or facility, **the landlord is responsible for the cost**, unless the landlord has obtained the written agreement of the tenant to be responsible for the cost. (emphasis mine)*

The burden of proof is on the Tenants to address the following issues:

1. whether it is a service or facility as set out in Section 1 of the Act;
2. whether the service or facility has been terminated or restricted;
3. whether the provision of the service or facility is a material term of the tenancy agreement;
4. whether the service or facility is essential to the use of the rental unit as living accommodation;
5. whether the landlord gave notice in the approved form; and,
6. whether the rent reduction reflects the reduction in the value of the tenancy.

Below are my findings with respect to the above issues:

1. Yes, this is a service or facility set out in Section 1 of the Act;
2. Based on the testimony of the parties, the laundry facilities have been terminated or restricted;
3. The laundry facilities are not a material term of the oral tenancy agreement;

4. The Landlord did not provide written notice of the termination or restriction of the laundry facilities; and,
5. I Order that a \$50.00 per month rent reduction reflects the reduction in the value of this tenancy.

I find that the Landlord has breached Section 27(2) of the Act by neither providing written notice to the Tenants for the termination or restriction of the laundry facility, nor reducing the rent by an amount that is equivalent to the reduction in the value of the tenancy. The rent reduction will be \$50.00 per month for this terminated facility.

Pursuant to Sections 65(1)(f) and 67 of the Act, I Order the rent amount to be, since the reduction of the facilities, \$1,150.00 per month. I grant the Landlord a Monetary Order in the amount of \$150.00, which has been calculated as follows:

Monetary Award

RENT	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
October 2021	\$1,200.00	\$1,200.00	\$0.00
November 2021	\$1,150.00	\$1,100.00	\$50.00
December 2021	\$1,150.00	\$1,100.00	\$100.00
January 2022	\$1,150.00	\$1,100.00	\$150.00
TOTAL OUTSTANDING RENT:			\$150.00

The Landlord's 10 Day Notice is cancelled, and the tenancy shall continue until it is ended in accordance with the Act. I grant the Landlord a Monetary Order in the amount \$150.00 which takes into consideration the rent reduction for the loss of facilities to the Tenants starting from November 2021. As the Tenants have been successful in their application to cancel the One Month Notice and the 10 Day Notice, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenants' application to cancel the Landlord's One Month Notice and 10 Day Notice is granted.

I Order the rent amount to be, since the reduction of the facilities, \$1,150.00 per month.

I grant a Monetary Order to the Landlord in the amount of \$150.00. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order within two (2) days of service, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

The Tenants may withhold \$100.00 from next month's rent to recover their application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 10, 2022

Residential Tenancy Branch