



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a One Month Notice to End Tenancy for Cause.

The Tenant stated that on December 02, 2021 the Dispute Resolution Package and a copy of the One Month Notice to End Tenancy for Cause which was submitted to the Residential Tenancy Branch on December 03, 2021 was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents, although he believes they were personally served to him on December 03, 2021.

Regardless of whether the aforementioned documents were personally served to the Landlord on December 03, 2021 or they were sent to the Landlord on that date by registered mail, I find that these documents were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*. As such, the One Month Notice to End Tenancy for Cause was accepted as evidence for these proceedings.

On January 24, 2022 the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that she is not certain, but she thinks these documents were served to the Landlord, via email, on January 24, 2022. The Landlord stated that the Tenants did not serve any additional evidence to the Landlord.

As the Landlord did not acknowledge receiving the Tenant's evidence package of January 24, 2022 and the Tenant is not even certain if the package was served to the Landlord, I find that the Tenants have failed to establish these documents were served

in accordance with section 88 of the *Act*. As the Tenants have not established proof of service, the January 24, 2022 evidence package was not accepted as evidence for these proceedings.

The Landlord stated that he submitted a letter which was signed by numerous neighbours to the Residential Tenancy Branch, although he cannot recall the date of service. The parties were advised that I did not have a copy of the letter that was allegedly submitted as evidence, nor was I able to find any record of the Landlord submitting evidence to the Residential Tenancy Branch.

The Tenant stated that the aforementioned letter was served to the Tenants, via email, sometime near the end of December of 2021. The Tenant stated that no evidence was received from the Landlord.

Even if I was able to view the letter that the Landlord allegedly submitted to the Residential Tenancy Branch, I would not accept it as evidence for these proceedings. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as a copy of the email that was allegedly sent, that corroborates the Landlord's testimony that it was served to the Tenants by email. I was further influenced by the Tenant's testimony that no evidence was received from the Landlord.

As the Landlord has not established proof of service, the letter he allegedly submitted to the Residential Tenancy Branch was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2017 and that rent is due by the first day of each month.

The Landlord stated that a One Month Notice to End Tenancy for Cause, dated November 17, 2021, was personally served to the Tenant on November 26, 2021. The Tenant stated that the One Month Notice to End Tenancy for Cause was personally served to her on November 17, 2021.

The Landlord stated that the One Month Notice to End Tenancy for Cause declares that the rental unit must be vacated by December 31, 2021. The Tenant stated that the One Month Notice to End Tenancy for Cause declares that the rental unit must be vacated by January 01, 2022.

The Landlord and the Tenant agree that the reasons cited for ending the tenancy on the One Month Notice to End Tenancy for Cause are that the tenant has been repeatedly late paying rent; that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; that the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord; and that the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.

In support of the application to end the tenancy because the Tenant is repeatedly late paying rent, the Landlord stated that:

- Rent for November was paid on December 16, 2021 or December 17, 2021;
- Rent for October was paid on November 17, 2021;
- Rent for August and September was paid on September 27, 2021;

- Rent for July was paid on July 21, 2021; and
- Rent for June was paid on June 22, 2021

In response to the application to end the tenancy because the Tenant is repeatedly late paying rent, the Tenant stated that:

- Rent for November was paid on December 16, 2021;
- Rent for October was paid on October 26, 2021;
- She thinks rent for September was paid in advance on August 23, 2021;
- Rent for August was paid in advance on July 21, 2021;
- Rent for July was paid in advance on June 22, 2021; and
- Rent for June was paid in advance on May 28, 2021.

The Landlord presented the following evidence and arguments to support the One Month Notice to End Tenancy for Cause:

- The male Tenant is storing property outside of the rental unit;
- The stolen property includes a sofa, bicycles, and a wheelchair;
- The location of the property disturbs another tenant living on the residential property as it restricts access to the other rental suite;
- He did not submit any photographs of the property being stored outside of the rental unit;
- The Tenants are selling drugs from the rental unit;
- He has frequently observed the Tenants deliver something to vehicles in exchange for money at various times of the day;
- The amount of traffic causes him to conclude the Tenants are selling illegal drugs;
- The vehicles involved in the drug trafficking in the neighbourhood disturbs other residents in the neighbourhood;
- He has a letter that is signed by 14 neighbours that attests to the disturbances the drug activity is causing in the neighborhood;
- He fears the people purchasing the drugs pose a danger to his children; and
- The Tenant told him that she is taking medication for a drug addiction.

The Tenant presented the following evidence and arguments in support the application to cancel the One Month Notice to End Tenancy for Cause:

- The property stored outside of their rental unit is not stolen;
- The property stored outside of their rental unit does not restrict access to other

areas of the residential complex;

- The Tenants do not sell or use drugs;
- She has a prescription delivered to the rental unit from a pharmacy on a daily basis;
- She pays for the delivery driver for the prescription when it is delivered; and
- This prescription medication is not related to an addiction to illicit drugs.

Analysis

On the basis of the undisputed evidence, I find that the parties have a tenancy agreement that requires rent to be paid by the first day of each month.

Section 47 of the *Act* allows a landlord to end a tenancy for a variety of reasons. Section 47(1) of the *Act* reads:

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

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(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,

(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;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) 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, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

On the basis of the testimony of the parties, I find that a One Month Notice to End Tenancy for Cause, dated November 17, 2021, was served to the female Tenant in November of 2021.

On the basis of the One Month Notice to End Tenancy for Cause that was submitted in evidence, I find that the One Month Notice to End Tenancy for Cause properly informed the Tenants that the Landlord wished to end the tenancy pursuant to sections 47(1)(b), 47(1)(d)(i), 47(1)(e)(i), 47(1)(e)(ii) and 47(1)(e)(iii) of the *Act*.

On the basis of the One Month Notice to End Tenancy for Cause that was submitted in evidence, I find that the One Month Notice to End Tenancy for Cause declares that the rental unit must be vacated by January 01, 2022.

When a landlord wishes to end a tenancy pursuant to section 47 of the *Act*, the landlord bears the burden of proving there are grounds to end the tenancy.

Residential Tenancy Branch Policy Guideline #38, with which I concur, suggests that three late payments are the minimum number sufficient to justify a notice under tenancy for being repeatedly late with the rent.

On the basis of the undisputed evidence, I find that the Tenants did not pay the rent by the time it was due on November 01, 2021 or October 01, 2021.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants did not pay rent by the time it was due at any other point in the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as deposit records or a payment ledger, that corroborates the Landlord's testimony that rent was not paid on time in June, July, August, or September or that refutes the Tenant's testimony that it was paid before the rent was due on those months.

As the Landlord has failed to establish that rent was not paid on time on at least three occasions during this tenancy, I find that the Landlord has not established grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*.

The Landlord retains the right to serve the Tenants with another One Month Notice to End Tenancy for Cause, pursuant to section 47(1)(b) of the *Act* if the Tenants do not pay rent on time in the future.

I find that the Landlord submitted no evidence to support his submission that bicycles, a sofa, and a wheelchair being stored outside of the rental unit are stolen. As the Tenant denies the property is stolen and there is no evidence to support the Landlord's submission, I cannot conclude the Tenants are storing stolen property outside of the rental unit.

Even if the property being stored outside of the rental unit is stolen, I find that the Landlord has submitted insufficient evidence to establish that the presence of the property places the Landlord's property at significant risk; that it unreasonably disturbs or significantly interferes with another occupant of the residential complex or the Landlord; that it has or is likely to damage the Landlord's property; that it has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, and/or that it has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord.

In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Landlord's testimony that the property is stored in a manner that restricts access to another rental suite on the residential property or that refutes the Tenant's testimony that it does not restrict access to another rental suite on

the property.

In the case of verbal testimony, when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. In this case, the Landlord bears the burden of proving he has grounds to end the tenancy.

I find that the Landlord submitted insufficient evidence to support his testimony that the Tenants are selling illegal drugs on the residential property. Although the Landlord testified that he frequently sees the Tenants deliver something to vehicles and receive something in return, no evidence was accepted as evidence for these proceedings that would support that submission. As the Tenant denies selling illegal drugs and she denies frequently exchanging something with occupants of vehicles, with the exception of a daily prescription delivery, I cannot conclude that the Tenants are selling illegal drugs.

Even if the Tenants are selling illegal drugs, I find that no evidence was accepted as evidence for these proceedings that would cause me to conclude that another tenant living on the residential property is being disturbed by that activity. I note that even if I had evidence that traffic coming to the rental unit is bothering the Landlord's neighbours, I would not conclude that there are grounds to end the tenancy because section 47 of the *Act* does not grant the Landlord authority to end a tenancy on the basis of neighbours being disturbed. Section 47 of the *Act* only authorizes a landlord to end a tenancy if the landlord or another occupant of the residential property is being unreasonably disturbed.

Even if the Tenants are selling drugs, I would not conclude that activity was unreasonably disturbing the Landlord. Although the Landlord testified that he fears the people purchasing the drugs pose a danger to his children, I find that the Landlord submitted insufficient evidence to establish this fear is reasonable.

After considering all of the written and oral evidence before me, I find that the Landlord has provided insufficient evidence that he has grounds to end this tenancy pursuant to sections 47(1)(b), 47(1)(d)(i), 47(1)(e)(i), 47(1)(e)(ii) and 47(1)(e)(iii) of the *Act*.

I therefore grant the Tenants' application to set aside this One Month Notice to End Tenancy for Cause.

Conclusion

The One Month Notice to End Tenancy for Cause is set aside. This tenancy shall continue until it is 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 *Act*.

Dated: February 08, 2022

Residential Tenancy Branch