



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

Both parties attended the hearing. The landlord was assisted by advocate JC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started in January 2012. Monthly rent is \$816.26, due on the first day of the month. At the outset of the tenancy a security deposit of \$325.00 was collected and the landlord holds it in trust.

Both parties agreed the landlord served the Notice and the tenant received it on November 30, 2021. The tenant submitted this application on December 06, 2021 and continues to occupy the rental unit.

The Notice was submitted into evidence. It is dated November 30, 2021 and the effective date is December 31, 2021.

The reason to end the tenancy is: "Rental unit/site must be vacated to comply with a government order".

The details of the cause are: "Municipal of [redacted] disallowed this unit to be used as a residence."

The landlord affirmed the tenant occupies an illegal suite in the rental property, the main house and the secondary suite are tenanted, and the tenant's unit cannot be rented.

The landlord submitted a letter dated November 24, 2021:

Bylaw file

The District of [redacted for privacy] has received a complaint through the Royal Canadian Mounted Police, regarding your property at [rental unit].

Specifically, the complaint deals with habitation in buildings other than the main house, which would include accessory buildings and possibly trailers situated on this property, which is not a permitted use and in contravention of Zoning Bylaw No 1255 and Building and Plumbing Bylaw 1150.

This property is zoned RA-1 Rural Agricultural 1, that only permits one single family residential dwelling unit and a secondary suite. The property is also located within the Agricultural Land Reserve (ALR)

Following a site visit on November 23, 2021, the property is also in contravention of the Districts Unsightly Premises Bylaw No 1400:

[...]

The Police complaint also involved possible electrical issues, which in due course will be investigated by an electrical safety officer with Technical Safety BC.

To avoid enforcement and or legal action the District requires the following voluntary compliance:

To give notice to vacate to your tenants residing in the illegal dwelling units and trailers to have the garbage and debris cleaned up to the same standards as the neighbourhood.

To have the garbage and debris cleaned up to the same standards as in the neighbourhood.

In addition, District staff will be recommending that Council place a Sec. 57 of the Community Charter on the title of the property.

Please contact the District by January 31, 2022 with how you intend to bring the property into compliance with the District bylaws.

(emphasis added)

The landlord submitted an order dated December 09, 2021:

ORDER

Whereas you have violated that duty, effective upon receipt of this Order, I exercise my authority under Section 31 of the Public Health Act and Section 11 of the Regulation and **hereby order you to:**

1. Cease and desist the discharge of sewage onto the ground.
2. Complete construction of a sewerage system which complies with the Regulation on or before January 28, 2022. Compliance with this request requires the following actions to be taken:
 - a. An Authorized Person (AP), pursuant to Section 7 of the Regulation, is required to submit filing information, pursuant to Section 8 of the Regulation to the Health Protection Environmental Services office located [redacted for privacy]. A copy of this Order must accompany this filing information at time of submission.
 - b. Within 30 days of completing the construction an AP must, pursuant to Section 9 of the Regulation, file to the Health Protection Environmental Services office located at [redacted for privacy], a signed letter of certification for the sewerage system.

(emphasis added)

The tenant stated the municipal government is allowing illegal suites, the landlord has been negligent to repair the rental unit and the landlord can take steps to allow the tenancy to continue. The tenant testified an electrician informed him that the electrical problems in the rental unit can be fixed in 15 to 20 minutes. The tenant said there is a previous decision from the Residential Tenancy Branch ordering the landlord to do repairs and to install a proper septic field.

The landlord affirmed he wishes to terminate the tenancy and that he attempted to terminate the tenancy four times.

Analysis

I accept the undisputed testimony that the landlord served the Notice and the tenant received it on November 30, 2021. I find the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(k) of the Act states:

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

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

Upon review of the November 24, 2021 letter issued by the local district, I do not find this letter to be a government order. Rather, I find this letter to be a notice to the landlord about the current zoning of the rental property and advising the landlord of the type of occupation permitted under such zoning. I make this finding because the letter does not stipulate it is a compliance order. The district provides the landlord with a deadline to explain how he intends to comply with the bylaws and explains that "to avoid enforcement and or legal action the District requires the following voluntary compliance".

In contrast, the order dated December 09, 2021 clearly states that is an order: "ORDER...hereby order you to". This order, issued after the Notice was issued, does not order the rental unit to be vacated.

Based on the foregoing, I find the landlord failed to prove, on a balance of probabilities, the ground of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

Conclusion

The Notice dated November 30, 2021 is cancelled and of no force or effect. This tenancy will continue 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: March 23, 2022

Residential Tenancy Branch