



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed on March 15, 2022 (the “One-Month Notice”); and
- Return of their filing fee pursuant to s. 72.

J.J. and D.M. appeared as the Tenants. They were represented by an advocate, S.P.. Y.L. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the One-Month Notice was personally served on the Tenants on March 15, 2022. The Tenants acknowledge receipt of the One-Month Notice on March 15, 2022. I find that the One-Month Notice was served on the Tenants in accordance with s. 88 of the *Act* and was received on March 15, 2022.

The parties each acknowledged receipt of the others application materials and raised no objection with respect to service. I find pursuant to s. 71(2) of the *Act* that the parties’ application materials were sufficiently served on the other as acknowledged at the hearing.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on May 1, 2017.
- Rent of \$2,598.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$1,200.00 in trust for the Tenants.

A copy of the written tenancy agreement was put into evidence by the parties. The tenancy agreement confirms the Tenants were responsible for utilities.

The One-Month Notice was issued on the basis of repeated late rent payment and the Tenants putting the Landlord's property at significant risk. A copy of the One-Month Notice was put into evidence by the parties.

The Landlord advised that the Tenants began to fall behind in rent in September 2020. He provided a payment history showing arrears accruing on rent payments until the spring of 2021, after which point the Tenants began to pay off the arrears each month in varying amounts. The Tenants do not dispute the payment history. Both parties provide a summary of the relevant payment history from September 2020 until March 2022 which largely correspond with each other except for a small discrepancy of \$0.06 that exists in the accounting beginning in January 2022.

The Landlord says that he issued the One-Month Notice due to the repeatedly late rent. I was also provided with a 10-Day Notice to End Tenancy signed on March 15, 2022, which listed total outstanding arrears of \$1,724.81. The Tenants advise that this amount was paid on March 17, 2022, which was confirmed by the Landlord.

The Tenants argue that they had financial difficulties in August 2020 and had discussed this with the Landlord prior to rent being due on September 1, 2020. The Tenants' advocate directed me to an email sent by the Landlord on August 26, 2020 which states the following:

You mentioned 2 roommates left and it was hard to find new roommate. How is the situation now? We may discuss the rent arrangement if you encounter some financial difficulties.

The Tenants' advocate described an arrangement whereby the Landlord agreed to the Tenant paying rent at a reduced amount and that the arrears could be paid back when they were able to do so. No written agreement was signed with respect to the flexible collection of rent nor was repayment to be made in a fixed amount or completed within a specified timeframe.

I was directed to several emails over the next several months in which the Landlord enquired on the Tenants financial status and their ability to pay rent. An email provided by the Tenants dated October 25, 2020 from the Landlord states the following:

If you pay \$2000 in the coming month again, the owing amount will be around \$2200. I may defer some amount and it will be difficult for me if the owing amount is too high. Don't know how you will improve your financial situation. You should pay as much as you can.

Correspondence provided by the Tenant indicate that there was a breakdown in the parties communication in March 2022. An email dated March 10, 2022 from the Landlord to the Tenants states the following:

The 2900 payment was received on March 1. It merely covered this month's rent 2829.83 (4624.81- 1794.98) and helped little to pay off the debt (1794.98). You have had 2 roommates and got over 1000 at least for a few months I think. I don't know if you have any reasons not to pay the debt off soon. Starting from next month, the \$25 late payment will be charged if the rent and debt are not paid on the due day (the first day of each month).

In another email sent by the Landlord on March 10, 2022, the Landlord makes the following proposal to the Tenants:

Your current debt is 1724.81 (4624.81- 2900). I would like you to make a plan. Do you have a proposal how and when it will be paid off? If you ask me, I want it to be paid off as soon as possible. Can you pay it off in the next 3 months? I still want to charge the \$25 late payment monthly in the coming months. At that way, you may prioritize the debt if your fund is limited.

The Landlord confirmed that he had a conversation with the Tenants respecting their financial difficulties at the Tenant's request in August 2020. He further confirmed that it was his understanding that he could call in the outstanding amounts at any time and that there was no deadline for the rent repayment as per their original understanding.

The Tenant's advocate argued waiver and equitable estoppel applied to the present circumstances and referred me to *Guevara v Louie*, 2020 BCSC 380 ("*Guevara*"). *Guevara* dealt with a judicial review of a decision and order of possession issued by the Residential Tenancy Branch in which the judge overturned the original decision on the basis that it was patently unreasonable and that it did not consider the application of waiver or estoppel in the context of a one-month notice to end tenancy issued on the basis of repeated late rent payments.

The Landlord also issued the One-Month Notice on the basis that the Tenants were putting the property at significant risk. The Landlord says that the Tenants had roommates periodically throughout the tenancy, some of whom were not authorized by him. The Landlord provided evidence of specific instances in which this occurred.

The Landlord argued that he discovered his insurance policy for the residential property has coverage for the Tenants and their family but that it does not cover risks that may be caused by the roommates. It was argued that the gap in insurance coverage put his property at risk. As argued by the Landlord, if nothing happens, then there is nothing. However, if something happens, then it is something.

The Tenants' advocate argued that the Tenants are not putting the property at risk at all, that the parties contemplated at the outset of the tenancy that the Tenants would have roommates to help pay rent, that the roommates were approved by the Landlord, and that the issue is one of the Landlord's insurance coverage for which the Tenants are not responsible.

I was directed to clause 21 of the tenancy agreement addendum which pertains to renter's insurance. The Tenants' advocate argued that the clause encourages but does

not require the Tenants to get insurances. It was further argued that renter's insurance would only cover the Tenants' personal belongings and would not cover property damage. It was finally argued that the Tenants would not be able to obtain insurance coverage for the property in any event, emphasizing that it is the Landlord's responsibility to do so.

The Tenants' advocate further argued that the One-Month Notice is technically deficient as the reasons stated within the notice were too generalized to be enforceability.

Analysis

The Tenants seek to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord. In this instance, the Landlord issued the One-Month Notice on the basis of ss. 47(1)(b) and 47(1)(b)(iii).

Addressing first the Tenants technical argument, I note that s. 52(d) of the *Act* requires a notice to state the grounds for ending the tenancy. The One-Month Notice is in the standard form and the relevant grounds for ending the tenancy were checked off in the notice to end tenancy. The details for cause were somewhat generalized and states the following:

The tenants have been short of the rent since September 2020. The tenants sublet the extra rooms to other people and obtain income from it. The rental unit is occupied by a family and irrelevant people. It is against the landlord's insurance policy and the tenants do not purchase the tenant insurance at this situation.

Despite the generalized nature of the description provided by the Landlord, I do not find that the One-Month Notice runs afoul the requirement set out under s. 52(d). When combined with the checked off bases listed in the One-Month Notice, there is sufficient specificity for the Tenants to be aware of the circumstances for which the Landlord seeks to end the tenancy. I do not accede to the Tenants argument that the One-Month Notice is too generalized to be enforceable.

Dealing first with the issue of repeated late rent payment, Policy Guideline #38 provides guidance with respect to when a landlord may end a tenancy for the tenant's repeated late rent payments. It states the following:

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.

In this instance, the Landlord argues that the Tenants were repeatedly late in paying their rent over a period beginning in September 2020 until the spring of 2021. With respect, I do not agree. It is clear based on the correspondence provided by the Tenants that the parties had an understanding that rent would be paid late beginning in September 2020. I accept that this was a relatively informal arrangement, one that was largely oral and did not have a specific repayment plan. However, the correspondence clearly demonstrates that the Landlord understood rent would not be paid in full and that he was attempting to accommodate the Tenant's financial difficulties. Indeed, the Landlord's email sent to the Tenants on October 25, 2020 stated that "you should pay as much as you can".

The Landlord did not argue that the emails were inaccurate and essentially admitted that he treated the unpaid rent as a debt that he could call in on demand. His understanding that the unpaid rent was a debt is confirmed by Landlord's email of

March 10, 2022, which states “I don’t know if you have any reasons not to pay the debt off soon”. He further proposed repayment over a period of three months.

The Landlord was understandably frustrated that the Tenants had not paid off the arrears approximately one year after the Tenants started to make repayments. However, there was no specific obligation for them to do so as the understanding was that they pay what they were able to pay and no demand was made for the total outstanding arrears. Ultimately, the Landlord was within his right to call in the debt by issuing the 10-Day Notice. The Tenants paid off that debt on March 17, 2022.

The Landlord is not permitted to rely upon the strict compliance of the due date for rent over the period in which he accommodated the Tenants financial difficulties. The doctrine of waiver and estoppel are summarized in *Guevara* at para 63:

While the legal test of waiver requires a “clear intention” to “forgo” the exercise of a contractual right, the equitable principle of estoppel applies where a person with a formal right “represents that those rights will be compromised or varied.” *Tymchuk v. D.L.B. Properties*, 2000 SKQB 155 at paras. 11-17. Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather “whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it.” *Bowen v. O’Brien Financial Corp.*, 1991 CanLII 826 (BC CA), [1991] B.C.J. No. 3690 (C.A.).

The parties entered into a rent deferral agreement, which is clearly demonstrated by their conduct and their correspondence. The Landlord accepted rent would not be paid in full with the understanding the Tenants would repay it when they were financially able to do so. I find that the Landlord waived his right to expect strict compliance of rent payment on the first of each month as per the tenancy agreement during the rent deferral period. Though not strictly necessary based on the application before me, I further find that the Landlord’s intention to waive his right to expect rent in full on the first only applied to the rent deferral period from September 2020 until the Spring of 2021. It did not amount to a general waiver of expecting rent to be paid in full on the first of the month prospectively.

I find that the Tenants cannot be said to be repeatedly late in paying rent as the Landlord waived his right to expect it on the first during the rent deferral period. I would not enforce the One-Month Notice under s. 47(1)(b) of the *Act*.

The second aspect of the One-Month Notice, being that the Tenants put the Landlord's property at significant risk, must also fail. The Landlord argues that his insurance policy does not cover risks to his property that may be caused by roommates. It should be noted that the Landlord admits that he consented to Tenants getting roommates, a point confirmed by the correspondence provided by the parties. He argues that the Tenants obtained roommates without his consent but provides no evidence of specific instances when this occurred. Based on the correspondence provided and the Landlord's admission at the hearing, I find that the Tenants made the Landlord aware of the roommates and gave the Landlord notice.

Fundamentally, it is not clear to me how the Tenants have put the property at significant risk due to the Landlord's insurance coverage. The Landlord is not arguing that the Tenants are putting the property at risk by, say, improperly using a gas stove or leaving the bathtub overflow. The Tenant's advocate is correct that the obligation to have proper insurance for the property rests with the Landlord. If there is a gap in the Landlord's insurance coverage brought about by his consenting to the Tenant having roommates, that is the Landlord's problem and one for which he may choose to correct or not. Indeed, there is no obligation under the *Act* or the Regulations for a landlord to insure their property at all. The risk of property loss would rest with an underinsured landlord if they failed to have adequate coverage.

Finally, there is nothing in the *Act*, Regulations, or the tenancy agreement that require the Tenants to obtain insurance for the property due to them getting roommates. Clause 21 of the tenancy agreement encourages, but does not require, the Tenants to obtain insurance for their personal property. This does not impose an obligation to ensure the Landlord's property is insured.

I find that the One-Month Notice cannot be enforced under s. 47(1)(d)(iii) as the Tenants have not put the Landlord's property at significant risk at all. Any risk that may exist is a direct result of the Landlord consenting to the roommates, which may mean he is underinsured. Insurance for the residential property is the responsibility of the Landlord.

I grant the Tenants' application to cancel the One-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

I grant the Tenants' application and cancel the One-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

As the Tenants were successful in their application, I find that they are entitled to their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenants \$100.00 filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenants withhold \$100.00 from rent on **one occasion** in full satisfaction of their 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 *Residential Tenancy Act*.

Dated: July 11, 2022

Residential Tenancy Branch