



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LRE, MNDCT, OLC, FFT**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), on April 8, 2022, to cancel a One Month Notice to End Tenancy for Cause, (the “One Month Notice”) issued on March 30, 2022, to suspend or set conditions on the landlord’s right to end the rental unit, for monetary compensation for monetary loss or other money owed, to have the landlord comply with the Act and to recover the cost of the filing fee.

On June 20, 2022 the tenants amended their application to increase their monetary claim and to dispute a Two Month Notice to End Tenancy For Landlord’s Use of Property, (the “Two Month Notice”) issued on June 6, 2022.

Preliminary and Procedural Issues

At the outset of the hearing legal counsel objected to the tenants amendment to their application to be considered as it was not filed within ten days of receiving the Two Month Notice and the tenants were required to file a new application.

In this case, I find the tenants did file to dispute the Two Month Notice on June 20, 2022, which was within the statutory time limit of 15 days, as their last day to dispute the Two Month Notice was June 21, 2022. The tenants were entitled to amend their original application to add this issue to this hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the One Month Notice and the

Two Month Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants' request to set aside the One Month Notice and the Two Month Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings. The balance of the tenants' application is dismissed, with leave to reapply.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the One Month Notice and the Two Month Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

The tenant's confirmed they received the landlord's evidence. The evidence of the tenants was questioned during the hearing, as the landlord could not find documents being referred to by the advocate. It was determined that the tenants did not serve the landlords with their evidence in accordance with the Residential Rules of Procedures (the "Rules"), as it must be served not less than 14 days before the hearing. The Rules provide the calculation of clear days to mean the first day and last days must be excluded. Further, the majority of the evidence of the tenants was available to be submitted at the time the tenants made their original application. The advocate for the tenants indicated a calculation error was made as they counted the day it was served, and it is their practise to sort through their client's evidence and serve it on the last day under the Rules. The advocate indicated they are prepared to simply ask question of their clients. Therefore, I find it appropriate to exclude all evidence filed with the Residential Tenancy Branch on July 25, 2022 and served upon the landlord the same day. I also note the majority of the evidence is related to issues that I have dismissed with leave to reapply.

Issues to be Decided

Should the One Month Notice and/or the Two Month Notice be cancelled?

Background and Evidence

The tenancy began on January 1, 2021. Current rent in the amount of \$1,575.00 was payable on the first of each month. The tenants paid a security deposit of \$687.50 and pet damage deposit of \$687.50.

The One Month Notice

The parties agreed that the One Month Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on April 30, 2022.

The reason stated in the Notice was 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;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security or physical well-being of another occupant or the landlord;
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The legal counsel for the landlords submits that there are multiple incidents for issuing the Notice for the above reasons stated.

Counsel submits the first issue was on November 14, 2021, where the tenants breach clause #9 of the tenancy agreement which states no drugs on site. Counsel submits that the landlord was informed by the paramedics that the tenant had overdosed on fentanyl.

Counsel submits that the tenants were served a breach letter on November 17, 2021, however, the tenant denied this incident even occurred and that no police or paramedics attended the rental unit. Filed in evidence is a photograph of the police and paramedics attending. Filed in evidence are text message from the tenant denying the incident ever occurred. Filed in evidence is a breach letter.

Counsel submits that the second issue was on December 16, 2021, when the tenants were neglectful by starting a fire by allowing their food to burn to the point that both the rental unit and the landlord's unit being filled with smoke. Counsel submits that it is likely that the tenants were on drugs, and this put the property at significant risks by their neglect.

Counsel submits that on February 19, 2022 the landlord believed that another incident of burning food was occurring, which the landlord was upset because the tenants had blocked their ability to communicate by text message and the tenants were served with a breach letter. Filed in evidence is a copy of the breach letter.

Counsel submits that on February 24, 2022 that there was an emergency with the heating unit and the tenants did not want to give access to the landlord and at that time they discovered that the storage area for the heating unit and electrical panel was filled with a large amount of stuff that prohibited access to the heating unit and electrical panel. Counsel submits that the tenants were given a breach letter to remove their items and have them stored properly; however only 90% of the items were stored properly.

The advocate for the tenants submits that on November 14, 2021, the paramedics did attend the rental unit for medical reasons; however, this cannot be found to be an unreasonable disturbance or a significant interference as everyone has the right to seek medical attention. The advocate submits that both tenants as of this year are in good health.

The advocate submits that they are surprised that the paramedic would disclose to the landlords the medical issue of the tenant as that does not seem to be normal practice.

The advocate submits that on December 16, 2021, the tenants burnt their dinner in the oven; however, there was no fire. The advocate stated that the tenant acknowledge that this was an accident.

The tenant GK testified that on December 16, 2021 they had food in the oven, and forgot to set the timer. GK stated that they were in the bathroom and lost track of time. GK stated that they placed the burnt food outside and waited for the smoke to clear. The tenant stated that there was no damage caused to the rental unit.

The tenant GK testified that there was no fire on February 19, 2022. GK stated they were caramelizing the sauce on the ribs, and when they opened the oven there was a blast of heat and the smell of their food. GK stated that the ribs were not burnt and there was no smoke. GK stated that the smell of food transfers between the units easily.

The tenant JV testified that they did not deny access to the storage area that has the furnace and electrical panel. JV stated that the landlords have their own separate access to this space and do not need their consent.

The advocate for the tenants submits that burning of food cannot be a breach of a material term and did not put the property at any risk. The advocate submits that the furnace area was cleaned up by the tenants and simply because the landlord only says 90% was done, it was not in an unreasonable state and did not impact the furnace or electrical panel.

The advocate for the tenants submit that the landlords had applied for an early end to tenancy and that hearing was held on June 6, 2022, at which time the Arbitrator dismissed the landlords' application due to the passage of time. The advocate submits that the same should apply to the Notice as the Notice was issued four months after the first allegation and, five weeks after the latest allegation. I have noted the file number on the cover page of this decision.

Counsel for the landlord argued that on November 14, 2021, the tenants were engaged in illegal activity by doing drugs in the rental unit, which is also contrary to the tenancy agreement. Counsel submits the tenants' own evidence shows they have only recently engaged in drug screening tests which can only support that they were doing drugs at the time.

Counsel for the landlord argued that the tenant admitted that they were careless when they were cooking, and this put the landlord's property at significant risk.

Counsel for the landlord argued that at the hearing on June 6, 2022, the Arbitrator determined that the matter did not meet the threshold for an early end of tenancy application; however, the Arbitrator determined that the merits of the One Month Notice would be heard on today's date, August 8, 2022 as it had already been scheduled as the tenant's had disputed the One Month Notice.

The Two Month Notice

The parties agreed that the two Month Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on August 31, 2022. The reason stated in the Two Month Notice was that the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual.

Counsel for the landlords submit that the landlord want to use the rental unit as an extension of their home for their own family.

The landlord testified that they no longer want to rent the basement unit and want to use it as an extension of their home, may be for a home office, a gym or for a recreational area.

The advocate for the tenants submit that the landlords did not issue the Two Month Notice in good faith and the Two Month Notice was issued on the same date the landlord knew their application to end the tenancy early was dismissed on June 6, 2022. The advocate stated by the landlord's certainly do not have any consistent plans for the rental unit. The file number is noted on the covering page of this decision

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The One Month Notice

The Residential Tenancy Policy Guideline (the "PG") 32. Illegal Activities defines the meaning of illegal activity and what constitutes an illegal activity, which reads as follows.

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to

establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw. In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

[Reproduced as written]

I accept the submission of the tenants' advocate that any person is entitled to receive emergency medical attention and the unreasonable disturbance caused due to this standing alone is not cause to end a tenancy.

While I accept the landlord's evidence that they were informed by a paramedic that the tenant had overdose on fentanyl and the tenant's behaviour of denying that the police and paramedics were even there is concerning; however, that alone is insufficient evidence to support the grounds of illegal activity.

I accept that the tenant may have overdosed from fentanyl November 14, 2021, which may have been consumed unknowingly through the ingestion of some form of drug, which is unknown, and this raised concerns for the landlords; however, I find no submission of a serious violation of a federal, provincial or municipal law, or relevant statute was presented or even referred to by legal counsel for the landlords. I have no records from the police department to support that an illegal activity had occurred within the rental unit, such as illicit drugs being found. The only information was that the paramedics informed the landlords that it was an overdose from fentanyl, which is hearsay. The onus is on the landlord to establish the requirements for illegal activity, I find the landlord has failed provide sufficient evidence as required by PG 32.

Further, on November 17, 2021, the landlord issued the tenants a breach of material term warning letter, that was related to the November 14, 2021 incident. No drugs, including marihuana are permitted on the property under the terms of the tenancy agreement. However, I have no proof that since receiving that breach letter that drugs have been found on the premises.

On December 16, 2021, the tenants caused both their unit and the landlord's unit to be filled with smoke from burnt food, this was not denied by the tenant. However, I have no evidence that this was related to drug use, this is simply speculating. While I do not accept that this simply occurred because the tenant was using the bathroom for a brief

moment in time, this was from the tenants "losing track of time", which is neglectful when food is on the stove or in the oven. However, this does not constitute illegal activity.

Further, this was a onetime incident, and the tenant had taken the burnt food outside before the landlord even attended the rental unit, nothing was damaged, such as the stove. The One Month Notice was issued nearly three and half months after the incident, if the landlord truly believed that they were significantly interfered with and unreasonable disturbed and believe their property was at significant risk this is an unreasonable delay.

On February 18, 2022, the landlord believed another incident of burning food was occurring and at that time the landlord was unable to reach the tenant by text message as the tenants had blocked the landlord's number and the landlord was banging to get the attention of the tenants. However, I find I have insufficient evidence to prove that there was a fire, burnt food or any neglectful actions of the tenants. The evidence of the tenant was they were broiling ribs in the oven and it was just the heat of the oven and the smell of the ribs. Further, on February 22, 2022, the landlords sent the tenants a breach letter indicating if further incidents occur they will terminate the tenancy. I have no evidence before me that shows that since February 22, 2022, and March 30, 2022 there were any further incidents.

The last incident was on February 24, 2022, regarding denying access to the storage area that contained the furnace and electrical panel and for breaching of material letter to have the area cleaned up. I find I am not satisfied that the tenants denied access. This is a shared space, which the tenants acknowledge at the hearing and the landlord is not required to seek permission of the tenants to access.

Further, the tenants did clean up the area, not to the landlord's satisfaction as they indicated 90% was completed; however, I am not satisfied that the remaining 10% would be a breach of the Act by failure to maintain the area, that complies with health and safety.

Based on the above, I find I must cancel the One Month Notice due to insufficient evidence from the landlord.

However, upon consideration of everything before me and with a view to avoiding further dispute between the parties, I find it appropriate to make the following orders

against the tenants to ensure there is compliance with Act and tenancy agreement, as provided under section 62(3) of the Act.

I Order the tenants that they must comply with all terms of their tenancy agreement. The tenants are cautioned that if illicit drugs or marihuana are found to be on the property or consumed on the property the landlord will have immediate grounds to end your tenancy.

I Order the tenants that at all times that they must carefully monitor their food when cooking.

I Order the tenants that they must only use the storage portion that is provided to them, the shelving. No items are to be stored on the floor or near the furnace or electrical panel. This is a shared space, and the landlord does not require to give you notice to enter or your permission to access the shared space.

I further suggest to the tenants that they obtain tenant insurance if they have not already done so, as suggested in your tenancy agreement. Tenant insurance is to cover your loss of your personal possession from fire, flood and theft. I would also cover any damage caused by accidental damage, as an example if the incident on December 18, 2021 did cause damage without proper insurance that could have very serious financial consequences as the tenant could be found responsible for any financial loss of the landlord.

The Two Month Notice

The PG 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Members states the following in part:

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;

The PG 2 B. GOOD FAITH states the following;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive,

regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they **do not have an ulterior purpose for ending the tenancy**, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case. If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

[Reproduced as written]

In this case, I cannot find the Two Month Notice was issued in good faith. The parties were at a hearing on June 6, 2022 and a decision was made on the same day dismissing the landlord's application to end the tenancy. The very same day the landlords issued the Two Month Notice. I find it more likely than not that the Two Month Notice was only issued as an ulterior motive to end the tenancy, should they be unsuccessful with the One Month Notice. Therefore, I find I must cancel the Two Month Notice and Two Month Notice has no force of effect.

As I have cancelled the One Month Notice and the Two Month Notice, I find the tenants are entitled to recover the filing fee. I authorize the tenants a onetime rent reduction in

the amount of \$100.00 from a future rent payable to recover the cost of the filing fee from the landlord.

As the landlord returned to the tenants their rent for August 2022 by declining the etransfer, as that was to be compensation for receiving the Two Month Notice, and I have cancelled the Two Month Notice, I find the landlords are entitled to the payment of rent for August 2022. Therefore, I find the tenants have 5 days from the date they receive this decision to repay August 2022, rent.

Conclusion

In light of the above, I grant the tenants' application to cancel the One Month Notice and the Two Month Notice. The tenants must comply with the Orders I have made. The tenants must repay August rent within 5 days of receiving this decision. I have dismissed the tenants' other remedies with leave to reapply.

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: August 12, 2022

Residential Tenancy Branch