



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NR VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, OLC, FFT
 CNR, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning 2 different rental units.

On August 23, 2022 both tenants and the landlord attended a hearing before me for 1 of the rental units. The tenants application seeks an order cancelling a notice to end the tenancy for cause; an order limiting or setting conditions on the landlord's right to enter the rental unit; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application. During the hearing the parties advised that the rent for the rental unit was combined with the rent for the 2nd rental unit. The parties also advised that a hearing was scheduled for the 2nd rental unit, which I ordered be joined to be heard with the 1st rental unit and the August 23, 2022 hearing was adjourned. My Interim Decision was provided to the parties on August 23, 2022.

The application that was joined to be heard with the 1st application was filed by one of the tenants as against the same landlord and a landlord company. It seeks an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

On September 28, 2022 both tenants and the individually named landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

At the commencement of the August 23, 2022 hearing, I advised the parties that the Residential Tenancy Branch Rules of Procedure specify that multiple applications contained in a single application must be related. I found that the applications seeking

an order that the landlord comply with the *Act*, regulation or tenancy agreement; and the application seeking an order limiting or setting conditions on the landlord's right to enter the rental unit are not related to the primary applications regarding ending the tenancy. Because there are time limits to dispute notices to end the tenancy, I determined that those applications are primary to the disputes, and the balance of the tenants' applications are dismissed with leave to reapply.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Act*, or should it be cancelled?

Background and Evidence

The landlord testified that the month-to-month tenancy in the first rental unit (LC) commenced on December 1, 2018 and the tenants still reside in the rental unit. Rent in the amount of \$5,000.00 is payable on the 1st day of each month, but in attempting to be flexible, the landlord agreed that the tenants pay at least \$1,000.00 on the 15th of each month and the balance on the 30th day of each month, and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit from the tenants, each in the amount of \$2,500.00 which are still held in trust by the landlord. A copy of the tenancy agreement has been provided for this hearing. The parties entered into another month-to-month tenancy agreement for a tenancy to begin on December 1, 2019 for the same amount of rent. A copy has been provided for this hearing.

The landlord further testified that the other rental unit (CL) was rented to the tenants on a 1 year fixed term basis commencing June 1, 2017 which reverted to a month-to-month tenancy, but the parties entered into a new tenancy agreement for a term commencing

June 1, 2018 expiring on May 31, 2019, also for \$5,000.00 per month. When that tenancy agreement expired, the parties entered into a month-to-month tenancy commencing June 1, 2020. There are currently no rental arrears.

Both are detached family homes, and the tenants commenced paying the rent combined for the 2 houses from June, 2020.

With respect to the 2nd rental unit (CL) the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 19, 2022 by email and by registered mail. A copy has been provided for this hearing and it is dated April 19, 2022 and contains an effective date of vacancy of May 4, 2022. The reason for issuing it states that the tenants failed to pay rent in the amount of \$7,722.00 that was due on April 1, 2022. The tenants paid the rent on April 29, 2022.

With respect to the 1st rental unit (LC) the landlord testified that he served the tenants with a One Month Notice to End Tenancy for Cause by email and by registered mail on April 19, 2022. A copy has been provided for this hearing and it is dated April 18, 2022 and contains an effective date of vacancy of May 31, 2022. The reason for issuing it states: Tenant is repeatedly late paying rent. The landlord has also provided a copy of the schedule of payments showing the combined rent due and paid for both houses.

The parties agreed to split the rental payments to the 15th and end of each month in March 22, 2022. The parties met at one of the rental units on April 18, 2022 to discuss the late rent. \$222.00 as owing that the tenants didn't agree with, and is not mentioned in the payment schedule provided by the landlord.

The tenants told the landlord that they needed help to put the Fortis bill in their name, so the landlord had it in the landlord's name and the tenants paid a deposit of \$2,000.00 on April 9, 2021, which ran out by March 18, 2022.

Rent has been continually late from November 2021 to March 2022 and after; as well as utilities. Copies of text messages sent to the tenants have also been provided for this hearing. Now that the moratorium during COVID-19 has passed, the landlord issued the notice to end the tenancy for repeated late rent.

The first tenant (AM) testified that rent was reduced by \$1,500.00 because repairs and mould were not taken care of; it had nothing to do with COVID-19.

Payments on the 15th and 30th of each month was the tenant's idea because the landlord was having financial difficulties, and text messages show that the landlord over-extended himself on his assets. The tenants paid rent by the 30th of each month for both houses since June, 2020 and there were never any arrears. Any discrepancy was clearly communicated before hand verbally or by text.

The second tenant (PC) testified that if there was going to be a late payment, it was agreed to by the landlord ahead of time; otherwise rent was never late. The tenant agrees with the schedule of payments provided by the landlord, but testified that the tenants had the landlord's consent for late payments.

Analysis

Firstly, dealing with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the landlord testified that it was served by email and by registered mail on April 19, 2022. There is no evidence that the tenants ever agreed to receive legal documents by email, however documents sent by registered mail are deemed to have been served 5 days later, or in this case April 24, 2022. The *Residential Tenancy Act* states that once served, the tenants have 5 days to pay the rent or dispute it. If the rent is paid within that 5 days, the Notice is of no effect. In this case the landlord testified that the tenants paid the rent on April 29, 2022, which is within 5 days, and therefore I find that the Notice is of no effect. The tenants have disputed it, and seek to have it cancelled, and I so order.

With respect to the One Month Notice to End Tenancy for Cause, I have reviewed the document and I find that it is in the approved form and contains information required by the *Act*. However, the Supreme Court has rendered a decision with respect to the principle of *estoppel*, which states that ending a tenancy is a significant request only in accordance with the *Act*, and that I must consider the totality of the evidence. It also states that I should consider 4 things:

1. the frequency of the defaults in the context of the length of the tenancy;
2. the length of default;
3. the content and communication between the parties in respect of any of the defaults; and
4. the expectations of the parties.

The landlord was required to give the tenant reasonable notice that strict compliance would be enforced before taking steps to end the tenancy for late payments, and I find that no such notice was provided to the tenants. The landlord testified that he was trying to be flexible with the tenants and changed the frequency of the payments, which is disputed by the tenant who testified that it was the tenant's idea due to the financial difficulties the landlord was having. Regardless of whose idea it was, the landlord testified that the tenants were late from November, 2021 but did not indicate to the tenants that they had to pay rent on time. The second tenant testified that there was always consent from the landlord when rent was going to be late. The landlord did not dispute that, and the text messages provided for this hearing appear to corroborate the testimony of the tenants. I have also read the summary of events provided by the landlord, however, the requirement is for the landlord to establish that the landlord had cause to issue the Notice at the time it was issued on April 18, 2022, and repeated late rent after issuing the Notice is not relevant. Considering the content and communication between the parties in respect of any of the defaults, none of the text messages indicate that the landlord would take measures if the payment dates and amounts were not adhered to. Therefore, I find that the principle of *estoppel* applies, and I cancel the One Month Notice to End Tenancy for Cause.

The tenants have paid the \$100.00 filing fees on both applications, and since the tenants have been successful with both applications, the tenants are entitled to recover \$200.00 from the landlord. I grant a monetary order in favour of the tenants in that amount. The landlord must be served with the order, and I order that the tenants may reduce rent by that amount for a future month, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 19, 2022 is hereby cancelled.

The One Month Notice to End Tenancy for Cause dated April 18, 2022 is hereby cancelled.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$200.00 and I

order that the tenants may reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

The balance of the tenants' applications is hereby dismissed 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: October 04, 2022

Residential Tenancy Branch