



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

Both tenants and both landlords attended the hearing. Both landlords and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence, with the exception of video evidence has been exchanged. Any evidence that a party wishes to rely on must be provided to the other party. Since the landlords have not provided the video evidence to the tenants, I decline to consider it. All other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the One Month Notice to End Tenancy for Cause dated July 22, 2022 was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement regarding storage space in the garage?

Background and Evidence

The first landlord (SK) testified that the tenancy began roughly 4 years ago and the tenants still reside in the rental unit. Each year the parties entered into a new tenancy agreement each containing a 1 year fixed term, however the latest tenancy agreement has reverted to a month-to-month tenancy effective June 2, 2022.

Rent in the amount of \$2,170.00 is payable on the 1st day of each month and currently there are no rental arrears. The tenants also paid a security deposit and a pet damage deposit at the commencement of the tenancy, which are still held in trust by the landlords, however the landlord does not know how much each of the deposits are. The rental unit is a suite in the upper level of a house and the lower level is also rented; the landlords do not reside on the rental property.

The tenants were late again paying rent for this month, so the landlords gave a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The second landlord (DK) testified that on July 22, 2022 a friend of the landlord served the tenants with a One Month Notice to End Tenancy for Cause by personally handing it to one of the tenants. A copy has been provided for this hearing and it is dated July 22, 2022 and contains an effective date of vacancy of August 31, 2022. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- 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;
- 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, safety or physical well-being of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord;

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants were late with rent in July, 2022 and the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities but paid the rent in full on July 6, 2022.

The occupant tenant in the lower level of the rental home was approached at night by someone looking for the tenant in the upper level regarding an alleged scam that has since been dealt with by the tenant. However people have been on the property due to fraudulent activity of the tenant. The tenant runs a daycare at the side of the house or in the rental unit, but the landlord does not know if it is illegal.

With respect to breach of a material term of the tenancy agreement, the landlord testified that the tenants changed the locks and use of the garage for storage, which is not included in the tenancy agreement. The landlords gave the tenant a breach letter, and a copy has been provided for this hearing. The tenants gave the landlord a code for the front door and a key for the garage but refused to remove their belongings, saying that it's included in the rent. The garage contains a pump with an alarm. During an inspection after the alarm sounded, the tenants let the landlords into the garage, but it was always left open for the alarm and the pump. The tenants were given access to the garage at the beginning of the tenancy for emergency use only. The original tenancy agreement included storage located in the crawl space and under the stairs. The tenants were advised that the tenants could use the garage for storage if they paid additional rent for it.

The landlord also testified that there has been police involvement with respect to graffiti in the neighbourhood, and photographs of people on the street have been provided for this hearing. The landlord believes it may have been the tenants' children who have been involved with neighbourhood graffiti.

The tenant testified that the tenancy began on April 1, 2018 and the landlords collected a security deposit of \$1,000.00 and a pet damage deposit in the amount of \$500.00.

The landlords showed the garage to the tenant at the beginning of the tenancy and told the tenant that belongings could be in the garage so long as the landlords could also store things in it. The tenant put on a keyless lock on the front door because the tenants' two 16-year old kids kept losing their keys. The tenants put a doorknob with a lock and key on the garage, and asked the landlords about that, advising that the

landlords would be provided with a key. The landlords said that was fine as long as the landlords could access it, but the landlord still hasn't picked up the key.

For 3 years there were no problems until the landlord did an inspection about a month before giving the tenants the Breach letter, and said that the tenants had to move their items out of the garage or add \$300.00 to the rent for use of the garage.

The tenant is a registered daycare provided but is not licensed, however only 2 kids are in the tenant's care, which is legal.

The occupant tenant in the lower level was a friend of the tenant, but not anymore. The tenant gave a reference to the landlords for that person to rent about 2 years ago. The occupant tenant is in recovery, doing drugs in the back yard and police have attended. The statements provided by the occupant tenant are not accurate. When the tenant's husband moved in, he had sold his trailer and the tenants gave the landlords 3 months rent up front in good faith. COVID caused things to go sideways, but there were no problems until the garage issue was raised.

When the first tenancy agreement was made and the parties did a "walk-through," the landlord said that the tenant was to keep her belongings on one side of the garage, and the landlord was going to put in appliances. Then for 3 years the tenant had items in there and it was never brought up that the tenants couldn't use it. Storage was included in the first tenancy agreement, but not in the last tenancy agreement, however the Facebook ad said that the rental unit was the upper suite with a detached garage.

The graffiti is gone, and the occupant tenant in the lower level of the rental home also has 2 kids.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice), and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

In order to end a tenancy for repeated late rent, the minimum number of late payments is 3. One of the landlords testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued for unpaid rent that was due on July 1, 2022, but the tenants

paid the rent on July 6, 2022. The *Act* also specifies that if the tenants pay the rent in full within 5 days of service, the Notice is of no effect, which I find is the case for the July Notice. The other landlord testified that the tenants were late with rent this month. That, according to the landlords' own testimony, does not give rise to issuing a notice to end the tenancy for repeated late rent.

I have reviewed all of the evidence of the parties, with the exception of the video evidence. The series of text messages provided by the tenants includes a reminder to the tenants that rent is due in April, but does not include a year. The evidence also shows that the tenants were late with rent in April, July, September and October, 2022, however the One Month Notice to End Tenancy for Cause was issued on July 22, 2022, prior to any late payments in September or October. Also, the messages indicate that rent was late in 2019 and 2021, however where the late payments are far apart, the tenants cannot be said to be repeatedly late. Neither of the landlords gave testimony about late rent payments except in July, 2022. Therefore, I find that the landlords, who could not anticipate in July that rent would be late for September or October, have not demonstrated repeated late rent.

The landlords have no idea whether or not the daycare is illegal, and have no idea who placed graffiti on the property. The *Act* permits a landlord to end a tenancy for damages, such as graffiti on the rental property, but not outside the rental property, and the landlords have not alleged any illegal activity at all. Therefore, I find that the landlords have failed to establish the following reasons for ending the tenancy:

- 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;
- 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, safety or physical well-being of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

With respect to a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, the landlords provided a breach letter to the tenants dated July 7, 2022 requiring the tenants to change the locks to

the original hardware or provide the landlords with keys, to remove all personal belongings from the garage for the landlords' use or sign a separate secondary agreement for its use, and all requests are to be completed by July 21, 2022 or a notice to end the tenancy will be issued. I accept the undisputed testimony of the tenant that about a month before the breach letter was received, the tenant had asked about putting a lock on the garage door with a key provided to the landlord, and the landlord said that was fine as long as the landlords could access it, but the landlords haven't picked up the key yet. I also accept the undisputed testimony of the tenant that the landlords were provided with the code for the front door lock, and the evidence indicates that the landlord received the code by text message on July 7, 2022, prior to the deadline indicated in the landlords' breach letter.

I find that the landlords have failed to establish any of the reasons for issuing the One Month Notice to End Tenancy for Cause, and I cancel it.

I also accept the undisputed testimony of the tenant that the landlords had allowed the tenants to use a portion of the garage for storage space to be shared with the landlords. A tenant is not required to enter into a new tenancy agreement when a fixed term agreement expires. In this case the tenants signed a new tenancy agreement, and it appears they did so each year. However, the latest tenancy agreement signed by the parties does not include storage. Therefore, I dismiss the tenants' application for an order that the landlord comply with the *Act* or the tenancy agreement.

Since the tenants have been partially successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlords in that amount, and I order that the tenants may reduce rent for a future month by that amount, or may serve the landlords with the monetary order which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated July 22, 2022 is hereby cancelled and the tenancy continues.

The tenants' application for an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 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.

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 19, 2022

Residential Tenancy Branch