



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

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; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants and the landlord attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

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

At the commencement of the hearing I alerted the parties that the Rules of Procedure provide that multiple applications contained in a single application must be related, and the primary focus of the hearing was the tenants' dispute of a One Month Notice to End Tenancy for Cause. The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is dismissed with leave to reapply.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated October 12, 2022 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed term tenancy began on June 1, 2022 and reverts to a month-to-month tenancy after 9 months, and the tenants still reside in the rental unit. Rent in the amount of \$1,800.00 is payable on the 1st day of each month and there are no rental arrears. On May 14, 2022 the landlord collected a security deposit from the tenants in the amount of \$900.00 as well as a pet damage deposit in the amount of \$500.00, both of which are still held in trust by the landlord. The rental unit is a basement suite, and the landlord resides in the upper level of the home. A copy of the tenancy agreement has been provided by both parties for this hearing.

The landlord further testified that on October 12, 2022 the landlord served the tenants with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy of 2 pages of the Notice has been provided by the tenants for this hearing. It is dated October 12, 2022 and contains an effective date of vacancy of November 30, 2022. The reason for issuing it states: Rental unit must be vacated to comply with a government order.

The landlord's written submission states that after receiving the letter from the City, the landlord was informed that if the City receives a report about an unregistered rental unit they follow a procedure to ensure that the unit is registered, and the landlord was informed that the basement suite was not previously registered, and therefore a bylaw officer would require an inspection. When the inspector determines the existence of an unregistered unit, the bylaw officer would issue a letter with a deadline to either apply to register the unit or decommissioning the unit by taking the kitchen out or removing the locks on doors separating the basement and main units.

The landlord has provided letters from the City, and testified that the one dated October 9, 2022 was received by the landlord on October 12, 2022 when the rental unit was inspected by the City, which is the standard notice that the City completes. The landlord researched and contacted the permit department. There were a number of listed requirements before the City will register the unit as legal. To be successful, there are still 6 items remaining. The City issues letters so that landlords can either decommission the rental unit or bring it to the standard required. The landlord cannot

afford to bring it to the standard required. If not decommissioned, the City will enforce the letter, and no other letters will be issued by the City. The letter is the order from the City, which indicates that the rental unit must be decommissioned.

The landlord emailed the bylaw officer advising that the landlord cannot afford to bring it to the standard, and will decommission the suite. Based on that, the landlord gave a notice to end the tenancy to the tenant effective December 1, 2022 and told the bylaw officer that. The landlord then told the bylaw officer that the tenant disputed the One Month Notice to End Tenancy for Cause and a hearing date was scheduled. The City will delay enforcement until after the hearing.

The landlord also served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated September 2, 2022 and contains an effective date of vacancy of March 1, 2023. The reason for issuing it states: 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's spouse), specifying the father or mother of the landlord or landlord's spouse. It was served by attaching a copy to the door or other conspicuous place on September 2, 2022. The tenant did not dispute the Notice.

The tenant testified that there is no reason to uphold the One Month Notice to End Tenancy for Cause; there is nothing from the City saying that the rental unit had to be decommissioned, and the tenant also called the City.

The lease ends on February 28, 2023. Contractors have been working on the property, but no one decided that it didn't comply with the bylaw, which is the landlord's problem, not the tenants' problem. The City said it is up to the owner to upgrade or decommission, and they work with landlords. They don't evict tenants, and won't close the rental unit down or force decommissioning. The tenants have a 13 month old baby and a 3 week old baby, and the tenant's wife was about 5 months pregnant when the tenants moved in, and thought they might extend the term of the tenancy. The landlord tried to kick out the tenants with no background or reason. The last email the tenant received shows that the landlord has lots of money and is well educated. The estimate the landlord provided does not have any information about an electrician; just a guy who wrote some stuff up.

There is no order to decommission. There have been a lot of misrepresentations from the landlord, and the tenant does not trust the landlord, and does not agree to the landlord's manipulation to suit the landlord.

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*.

The landlord has provided a lot of evidentiary material, but did not provide a copy of the One Month Notice to End Tenancy for Cause. The tenant has provided a copy of the first 2 pages of a 3-page Notice. The *Act* requires a landlord to give a notice to end a tenancy in the approved form. Since only the first 2 pages of the 3-page form have been provided for this hearing, I am not satisfied that it was given in the approved form. Therefore, I cancel it, and the tenancy continues until ended in accordance with the law.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee. 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 for a future month by that amount or may 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 tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The One Month Notice to End Tenancy for Cause dated October 12, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

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 \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount as full recovery, 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: December 30, 2022

Residential Tenancy Branch