



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to three separate application filed by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and respective evidence submissions.

Pre-liminary Matters

This matter was a bit complicated due to the fact the parties entered into two separate tenancies with the landlord. The tenants are mother and daughter and both were renting the upper unit of the residential property. Subsequently, the daughter A.M. entered into another tenancy with the landlord to occupy the lower portion of the suite. The issues involving the Notices to End Tenancy were overlapping. The hearing pertaining to the lower suite was scheduled on the same date but at a different time. For efficiency purposes the matters were all heard together as one hearing. Additionally, although there were separate tenancy agreements on file, since the parties to the tenancy agreements are also overlapping, for the purposes of this decision, they will both be treated as one tenancy.

On January 3, 2023, the landlord served the tenants with new 10 Day Notices pertaining to both the upper and lower unit. Although the tenants amended their applications to dispute these Notices, the landlord was advised that these notices would not be addressed in this hearing. This decision was made due to the fact that these Notices were served only 16 days prior to the hearing date and the main subject matter of these Notices was unpaid rent the landlord was claiming from over two years ago. I find the tenants were provided insufficient time to respond to a claim of this nature. The landlord was advised if he wished to pursue this past outstanding rent he could file a separate application. I also caution the landlord that if he is going to pursue such a claim, it would be in his best interest to provide all banking records in his possession rather than solely relying on the tenants providing evidence to prove rent payments from two years ago.

The landlord was agreeable to the above and indicated he was only seeking an order of possession in this hearing and not any monetary compensation.

Issues

Should the landlord's One Month Notice and or 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord be ordered to comply with the Act and make repairs to the unit?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The tenancy with both tenants for the upper unit began on March 1, 2019. The tenant A.M. entered a tenancy for the lower unit beginning August 24, 2020.

The landlord issued a One Month Notice for each unit to the tenants on August 29, 2022. The tenants filed applications to dispute the Notices within the applicable time period under the Act. The One Month Notices had an effective date of September 30, 2022.

Although the One Month Notices were issued on various grounds, in the hearing the landlord was relying on the grounds that the tenants breached a material term of the tenancy agreement and sublet the unit without the landlord's consent.

The landlord referred to clause #15 of the tenancy agreement which states there is not to be any storage or occupation of campers, motorhomes or trailers on the property.

The landlord submitted various pictures of the trailer on the property. The pictures depict the trailer first parked on the driveway and then parked on the street in front of the house. There is a ladder from the trailer coming on to the sidewalk as well as cables going across the sidewalk to the house. The landlord testified there is an elementary school nearby and the wires created a tripping hazard for pedestrians and other items around the camper were also a hazard. The landlord testified there was a bucket under the camper which emitted a strong smell of sewage. The landlord referred to a written warning notice dated August 13, 2022 requiring the tenants to get rid of the camper immediately. The landlord submitted a witness letter from the next door neighbor stating that she first informed the landlord of the camper issue in mid-July 2022 after it had been there for approximately 3 weeks. The witness letter states the landlord was again informed of the issue on August 18, 2022 as the camper was still there. The landlord referred to the tenants own picture evidence which reflects the camper was not removed until September 6, 2022, seven days after the issuance of the One Month Notice. The landlord submits that whether the tenants were subletting to the people in the camper or not, the fact is they let them reside there for an extended period contrary to the tenancy agreement.

Tenant A.M. testified that it was her girlfriend & her husband who were residing in the camper and that they were only there for two weeks while helping with yard work. A.M. testified that trailer was parked in the driveway but later moved to the street. A.M. acknowledged there was power hooked up to the trailer from the house even when it was moved to the street. A.M. testified that when the landlord first became aware of the trailer, he asked that it be gone within one week. A.M. testified that the camper only showed up the night before they received the written warning on August 13, 2022 and was gone by September 1, 2022. After the landlord referred to the tenants' picture evidence from September 6, 2022, A.M. testified that she may have been wrong about the date the camper left. A.M. submits the bucket under the trailer was not for sewage but to collect "gray water".

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

There was no dispute that clause #15 of the addendum to the tenancy agreement stipulates that there is not to be any storage or occupation of campers, motorhomes or trailers on the property. There was also no dispute that a camper was stored or occupied on the property. There was also no dispute that on August 13, 2022, the landlord issued a warning notice to the tenants to remove the camper immediately. There was also no dispute that the tenants waited until 7 days after receiving the One Month Notice on August 29, 2022, to remove the camper. As such I find the tenants were in material breach of the tenancy agreement. I find the landlord took reasonable steps to notify the tenant of the breach within a reasonable period after the becoming aware of the issue himself. I find the landlord also provided the tenant with more than ample opportunity to correct the breach prior to issuing the One Month Notice. The tenants were informed by the landlord to have the camper removed immediately on August 13, 2022. The One Month Notice was not served until August 29, 2022 giving the tenants sixteen days to correct the breach. The tenants did not correct the breach until seven days after the issuance of the One Month Notice. I also find the tenants testimony to be lacking credibility in regard to the length of time the camper was on the property. The tenant A.M. changed her testimony after it was pointed out that their own picture evidence demonstrated the camper being there for a longer period than they claimed. Also, I accept the witness letter from the next-door neighbor to be a credible reflection that the camper was there from before mid-July 2022.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds of a material breach of the tenancy agreement. Both the applications to cancel the One Month Notice's dated August 29, 2022 are dismissed and the landlord is entitled to an Order of Possession for both units pursuant to section 55 of the Act.

As this tenancy has ended pursuant the One Month Notices, I make no finding on the merits of the 10 Day Notice dated September 2, 2022. As the tenancy has ended, the tenants' application for repairs and for an order for the landlord to comply with the Act are dismissed without leave to reapply.

As the tenants were not successful in these applications, the tenants are not entitled to recover any filing fees paid.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 19, 2023

Residential Tenancy Branch