



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Code: CNC

Introduction

The tenants seek an order cancelling a *One Month Notice to End Tenancy for Cause* (the "Notice") pursuant to section 47 of the *Residential Tenancy Act* ("Act").

Issue

Are the tenants entitled to an order cancelling the Notice?

Background and Evidence

The tenancy began on March 1, 2016. Monthly rent is \$990.00. The tenants paid a \$495.00 security deposit when they moved into the rental unit almost seven years ago. There is a copy of the written tenancy agreement in evidence.

On August 17, 2022 the landlord issued the Notice in person. A copy of the Notice was in evidence. Page two of the Notice indicates that the reason for ending the tenancy is that the tenants did not pay the security deposit within 30 days as required by the tenancy agreement. There is an attachment to the Notice with the details, which states:

The tenants [names redacted] paid the security deposit of \$495 after they moved into the rental unit/site located at Downstairs [address of rental unit redacted], New Westminster, BC but after one or two years later, the tenants [names redacted] told the landlord [name redacted] to use the security deposit of \$495 as part of the rent for a monthly rent.

The landlord [name redacted] does not have any security deposit from the tenants [names redacted] after that until now.

During their testimonies, the parties explained that about two years into the tenancy the tenants told the landlord that he could use the security deposit to help pay for the rent. According to the landlord he used it to help pay for the rent but then asked the tenants to pay back the security deposit. The tenants apparently never paid it back.

The tenants' version is that they *did* pay him back the security deposit. But no receipt was ever given. Nonetheless, the tenants find it "weird" that the landlord has waited this long—about 5 years—to pursue collection of the security deposit. The tenants also argue that the landlord only issued the Notice because the landlord wants to turn the rental unit into a short-term travel accommodation.

Analysis

When a tenant disputes a notice to end the tenancy it is the landlord's obligation and onus to establish the ground or reason why that notice was given. The landlord must prove the ground or reason on a balance of probabilities.

In this case, the landlord issued the Notice on the ground that the tenants did not pay the security deposit or pet damage deposit within 30 days of the date it was required to be paid under the tenancy agreement (see subsection 47(1)(a) of the Act).

However, the landlord's own evidence—most significantly the letter attached to the Notice—establishes that the tenants *did* pay the security deposit within thirty days of the date that it was required to be paid under the tenancy agreement. That is, within 30 days commencing on March 1, 2016.

The landlord's decision to allow the tenants to use their security deposit to pay for rent during the tenancy does not change the fact that the tenants initially fulfilled their obligation to pay the deposit. Both the tenants and the landlord were not legally permitted to use the security deposit for rent, as per section 38 of the Act. This section only permits the retention, use, or handling of a security deposit as outlined. Therefore, the tenants cannot be held responsible for failing to pay the security deposit within 30 days of the beginning of their tenancy on March 1, 2016.

After considering all of the oral and documentary evidence before me, I find that the landlord has not established the ground on which the Notice was given. Accordingly, the Notice is cancelled effective immediately. The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

The application is granted.

The *One Month Notice to End Tenancy for Cause* served on August 17, 2022 is hereby cancelled effective immediately.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 14, 2023

Residential Tenancy Branch