



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, Landlord's Legal Counsel, and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by registered mail on July 21, 2022, Tenants confirmed receipt, deemed served on July 26, 2022;
- the Tenants' Notice of Dispute Resolution Proceeding package and evidence served by registered mail in August 2022, Landlord confirms receipt, sufficiently served on August 22, 2022;

- the Landlord's evidence served by registered mail on December 9, 2022, Canada Post Tracking number is on cover sheet of Decision, Tenants confirmed receipt, deemed served on December 14, 2022;

Pursuant to Sections 71(2), 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Adjournment request

RTB Rules of Procedure 7.8 and 7.9 provide me the authority to adjourn hearing proceedings and read as follows:

7.8 Adjournment after the dispute resolution hearing begins: *At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.*

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment: *Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

The Tenants submitted that they received the Landlord's evidence package, over 70 pages of materials, and they stated they are not prepared to rebut or deal with the Landlord's evidence on their own. They stated they need Legal Counsel who they have spoken to but were not available on this date. They stated this is a straightforward

situation of an additional person on the lease. The Tenants said the late service of the Landlord's evidence puts them at a disadvantage and could have been provided long ago.

The Landlord opposes the adjournment request. They agree, it is a straightforward matter. The evidence and documents submitted are in response to the Tenants' application and materials. The Tenants have known about this matter since August 2019. He has had more than enough time to prepare. Legal Counsel stated there is no expert evidence, the only evidence are the Tenant's letters or the Landlord's letters concerning the tenancy. Landlord's Legal Counsel was retained in November to assist in the matter. The legislation takes into consideration there are rules in place how and when documents are to be exchanged. They submit that the Tenants are at the eleventh hour seeking Legal Counsel; however, it is not required. The Landlord has waited beyond the effective date of the One Month Notice. The Landlord wants resolution.

Evidence exchange rules are recorded in the RTB Rules of Procedure. Rule 3.14 states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. Rule 3.15 states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The parties agree that this matter is straightforward. I find both parties have uploaded their respective evidence in a timely fashion, within the guidelines of the Rules of Procedure, that take into consideration that the applicant party will have one week to review the respondent's evidence. Legal Counsel are not required, but if a party feels they need this assistance, they must act accordingly and well in advance of their hearing day. I find there is no prejudice to the Tenants to proceed to hearing and I decline the adjournment request made by the Tenants.

The Tenants object to my decision to decline the adjournment request. They state there is no jeopardy to the Landlord in their adjournment request as rent is paid on time.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?

2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on May 1, 2015. Monthly rent is \$1,724.49 payable on the first day of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was August 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

Tenant breached Clause 13 ADDITIONAL OCCUPANTS of the Residential Tenancy Agreement by allowing his girlfriend to move in without my prior written consent.

Tenant received Breach Letter to correct the situation by July 18th, 2022. He refused to take the necessary steps to correct the situation. He did not comply with my request to apply in writing for permission to authorize adding his girlfriend to the Residential Tenancy Agreement that we have with each other.

Clause 13 of the parties' tenancy agreement follows:

13 ADDITIONAL OCCUPANTS. *Only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above who, without the landlord's prior written consent,*

resides in the rental unit or on the residential property in excess of fourteen cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this Agreement. If the tenant anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy on proper notice.

On July 12, 2022, the Landlord issued a breach letter to the Tenant stating that “*it has come to my attention you have allowed an additional person to occupy the premises without permission*”. The Landlord gave the male Tenant notice to “immediately correct” the breach, setting a deadline as July 18, 2022.

The Landlord stated that Clause 13 is a material term of their tenancy agreement because it is important for the Landlord to know, especially if there are couples, and if they separate, the Landlord will have certainty about who is responsible to pay the rent. If something goes wrong, for the Landlord, she still needs to collect rent. She also said if there is an emergency in the building, the Landlord said the female Tenant does not know what to do. The Landlord does not know anything about the female Tenant's financial position which has implications about naming her as an occupant or as a Tenant.

The male Tenant wrote the Landlord on July 18, 2022 submitting his “formal” notification that the female Tenant is occupying the rental unit. The Tenant's letter continues stating:

...

As you are aware, you have had knowledge of [female Tenant]'s occupation of my unit from at least the fall of 2019. It was at that time that you agreed to upgrade our main closet system and you took both [female Tenant] and myself to the adjacent building (of which you are the owner) to show us a closet system in another apartment that was similar to the system that would be installed in ours. It was at that time that you provided consent for [female Tenant] to occupy the premises with me.

...

The Landlord stated that the Tenant's July 18, 2022 letter did not seek permission for the additional occupant. The Landlord said she needs the female Tenant to fill out an Application for Tenancy. Legal Counsel stated that the Landlord must know who is residing in the building, and at no time did the Landlord give oral consent to allow an additional occupant or waive her reliance on Clause 13 of the tenancy agreement.

The Tenants testified that the Landlord was aware of the female Tenant residing in the rental unit for years. The male Tenant recalls a discussion outside his rental unit before the time of showing the closet system in the other rental unit with the Landlord about the female Tenant moving in because there was mention to her age. At the time of viewing the closet system, the male Tenant said there were no additional fielding questions of the female Tenant because the Landlord was "*fully informed, fully aware, and implicitly had given us permission for that to take place.*"

At the beginning of the male Tenant's tenancy, he had a female friend accompany him when signing the lease for the rental unit. The Landlord was quite adamant and insistent in asking questions like, "*was this person going to live with you and were there going to be children.*" The male Tenant is sure that if the Landlord did not have the knowledge about the female Tenant residing with the male Tenant, she would not have so easily walked away from it without asking the proper questions.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this matter. It states:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(h) *the tenant*

(i) *has failed to comply with a material term, and*

- (ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

...

- (2) *A notice under this section must end the tenancy effective on a date that is*
 - (a) *not earlier than one month after the date the notice is received, and*
 - (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Tenants were deemed served with the One Month Notice on July 26, 2022. I find that the One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on August 2, 2022 which was within 10 days after receiving the One Month Notice.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a landlord can end a tenancy agreement if a material term of that agreement has been breached. The Guideline states:

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;*
- that they believe the problem is a breach of a material term of the tenancy agreement;*
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

The Landlord claims that Section 13 is a material term of their tenancy agreement. The Landlord needs records of all occupants or tenants in the building. She stated she needs the female Tenant to fill out an Application for Tenancy, or I suggest that the male Tenant's Application for Tenancy must include information in sections I and/or J so the Landlord has full documented information about the female Tenant. I note that even though Clause 13 states the term is material, this is not decisive.

The Tenant testified that when he first signed the lease for the rental unit in 2015, the Landlord asked many questions of his female friend who had accompanied him on that day. In 2019, before the discussions about additional closets being installed in the Tenants' rental unit, the Landlord and the Tenant discussed the Tenants' relationship. During the look at the other rental unit's closets, the Landlord did not press that she needed additional information about the female Tenant. I find that Clause 13 is not a material term of the tenancy agreement. If it was, the Landlord would have acted sooner

in her investigation of the female Tenant. It seems the Landlord needs additional information of the female Tenant and I do not deny this information is important for her.

I find based on the totality of the evidence from both parties, the Landlord has not proven on a balance of probabilities that the Tenants have breached a material term of the tenancy agreement. I cancel the Landlord's One Month Notice and the tenancy will continue until ended in accordance with the Act.

The Tenants did not provide evidence on their claim for the Landlord to comply with the Act, Regulation, or tenancy agreement. I dismiss this part of the Tenants' application.

As the Tenants are mostly successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenants' application to cancel the Landlord's One Month Notice is granted.

The Tenants may withhold \$100.00 from next month's rent to recover their application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 16, 2023

Residential Tenancy Branch