



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNC, MNDCT, RP, PSF, LRE, OLC, FF
For the landlord: OPC, FF

Introduction

This hearing was convened as the result of the cross-applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to make repairs to the rental unit;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the cost of the filing fee

The landlord applied for the following:

- an order of possession of the rental unit pursuant the 1 Month Notice issued to the tenants; and
- recovery of the cost of the filing fee.

The tenants and the landlord's agent (landlord) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Both parties confirmed receiving the other's evidence in advance of the hearing, presenting no objection to the same. I find the tenants' and the landlord's evidence sufficiently served, in accordance with the Act.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application seeking cancellation of the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice and the landlord's application. The balance of the tenants' application is dismissed, with leave to re-apply.

Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice?

Is the landlord entitled to an order of possession of the rental unit and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on April 15, 2020, monthly rent is \$1,550, and the tenants paid a security deposit of \$750. Filed into evidence was a copy of the written tenancy agreement, with an attached "Schedule A" containing 36 terms.

The subject of this dispute is the 1 Month Notice.

The 1 Month Notice in this case, was dated August 27, 2022, with a listed move-out effective date of August 31, 2022. The tenants confirmed receipt of the Notice on July 27, 2022, when it was found attached to the tenant's door. Filed into evidence was a copy of the Notice. The landlord confirmed that the Notice should have been dated July 27, 2022.

It is noted that the tenants' application in dispute of the Notice was filed on August 5, 2022, within the deadlines required by the Act to dispute the Notice.

Pursuant to Rule 7.18, the landlord proceeded first in the hearing to give evidence to support the Notice.

The cause listed on the Notice alleged that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Causes portion of the Notice, the landlord wrote the following, "Tenant is using tarp type curtains on their balcony. Warning notice has been provided on July 19, 2022."

Upon inquiry as to the material term in question, the landlord was asked what made the term material and the reply was that this was a clause in the tenancy agreement. The landlord referred to clause 31 of the Schedule A, which stated,

RULES AND REGULATIONS. The Tenant agrees that the Rules and Regulations delivered with this Agreement and such reasonable variations, modifications, and additions, as from time to time be made by the Landlord, and any other further reasonable Rules and Regulations that may be made by the Landlord and communicated to the Tenant in writing shall be observed and performed by the Tenant, his occupants, and guests, and such Rules and Regulations shall be read as forming part of the terms of this Agreement. The initials noted in this Agreement are made by the Tenant.

[Reproduced as written]

I note that the tenants did not initial this portion of the tenancy agreement nor was there a place to do so.

The landlord confirmed that the first time the tenants received a copy of the Rules and Regulations was when it was attached to the warning letter sent on July 19, 2022, further confirming the Rules and Regulations were not attached to their written tenancy agreement. Filed in evidence was the warning letter.

The landlord submitted that they want the tenants to remove the blue tarp on their balcony.

The landlord's relevant evidence included the warning letter, the written tenancy agreement, and a photograph.

Tenants' response –

In their application, the tenants wrote the following:

Asked to remove this tarp we've used for a long time to protect from the elements. Confirmed no impact to neighbors below. They provided a notice citing clause 31 saying they can change the rules of tenancy anytime based on their discretion & to remove the tarp immediately. Seems like this direction is coming from higher up Cascadia apartments company who came by and disapproved of appearance. Our building is so unkempt it has green mold all over and maintained to a poor standard. Seems arbitrary.

The tenants said that they used the tarp in the summer during the heat wave to block the sun, which kept their apartment cooler. In the winter, the tenants submitted that the tarp has kept out moisture.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Tenants' application –

Section 47 of the Act permits a landlord to seek termination of a tenancy by issuing a 1 Month Notice for a variety of causes. In this case, the landlord alleged that the tenants breached a material term of the tenancy that was not corrected within a reasonable time.

Where a Notice to End Tenancy is disputed, the landlord had the burden to prove that the tenancy should end for the reasons indicated on the Notice.

Tenancy Policy Guideline 8 states that a material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy. I do not find that a term becomes material due to its inclusion in the written tenancy agreement. The landlord failed to demonstrate that when the tenancy agreement was being negotiated, the tenants understood that they were not allowed to put up a curtain or shade on their balcony. The tenants did not receive a copy of the Rules and Regulations until the written warning letter, as it was not attached to the written tenancy agreement, as stated in the tenancy agreement. For this reason, I find the term in the Rules and Regulations cannot be a material term and is not enforceable.

Due to the above, I find that the landlord did not prove that the term in question was a material term or that the tenant violated the term.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued August 27, 2022, for an effective move out date of August 31, 2022, is not valid and not supported by the evidence, and therefore has no force and effect.

I ORDER that the 1 Month Notice is cancelled and of no force or effect, with the effect that the tenancy will continue until ended in accordance with the Act.

As I have ordered the landlord's 1 Month Notice, dated August 27, 2022, cancelled, the tenants' application is granted.

As the tenants' application was granted, I grant the tenants recovery of their filing fee of \$100. I authorize the tenants a one-time rent reduction of \$100 to satisfy this monetary award. The tenants should advise the landlord when making this deduction and the landlord may not serve the tenants a 10 Day Notice to end the tenancy when they make the deduction.

Landlord's application –

As I have cancelled the Notice at issue in this dispute, I dismiss the landlord's application seeking an order of possession of the rental unit based upon that Notice, without leave to reapply, due to insufficient evidence.

As a result, I also dismiss the landlord's request to recover the filing fee.

Cautions to the landlord –

After reviewing the term in Schedule A upon which the 1 Month Notice was based, section 31, I find the wording in the clause, Rules and Regulations, is an attempt by the landlord to change terms in the tenancy agreement without the tenant's consent during the tenancy. The landlord as cautioned that parties may not unilaterally alter or change terms in the signed, written tenancy agreement. Both parties must consent in writing to any changes to terms in a tenancy agreement. In this particular case, pursuant to section 62 (2) of the Act, I find the Rules and Regulations are not enforceable as to these tenants as they were not attached to the tenants' written tenancy agreement and cannot form part of their original tenancy agreement.

Conclusion

The tenants were successful with their application and the 1 Month Notice is cancelled and is no force or effect.

The balance of the tenants' application not dealing with the Notice is dismissed, with leave to re-apply.

The landlord's application is dismissed, without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 03, 2023

Residential Tenancy Branch