



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT
 OPC, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a One Month Notice to End Tenancy for Cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application. The landlord has applied for an order of possession for cause and to recover the filing fee from the tenant.

The tenant attended the hearing with a support person, and the landlord was represented by an agent. The landlord's agent and the tenant each gave affirmed testimony and the parties were permitted to question each other and to give submissions.

The landlord's agent advised that all evidence of the landlord has been provided to the tenant, but the landlord's agent has not received any evidence from the tenant. The tenant did not dispute that the landlord's evidence has been received, and advised that all of the tenant's evidence was provided to the landlord by email. The tenant had applied for an order permitting the tenant to serve the landlord by email, and a Substitutional Service order dated November 1, 2022 was made. The tenant has also provided copies of emails to the landlord containing multiple attachments, and I am satisfied that the landlord has been provided with the tenant's evidentiary material.

All evidence of the parties has been reviewed and is considered in this Decision.

During the course of the hearing the tenant referred to an amendment to the tenant's application. Generally amendments appear on the service portal as an Amendment, but in this case, the amendment appears in the evidence portion of the tenant's application.

Therefore, I find that the tenant has disputed 2 notices to end the tenancy given by the landlord.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated September 23, 2022 was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established that the One Month Notice to End Tenancy for Cause dated November 10, 2022 was issued in accordance with the *Act*, or should it be cancelled?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to rent increases?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on September 7, 2019 and reverted to a month-to-month tenancy after August 31, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$3,195.00 is payable on the 1st day of each month and there are currently no rental arrears. On September 6, 2019 the landlord collected a security deposit from the tenant in the amount of \$1,597.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided by both parties for this hearing.

The landlord's agent further testified that on September 23, 2022 the tenant was served with a One Month Notice to End Tenancy for Cause by registered mail and by email. A copy has been provided by both parties for this hearing, and it is dated September 23, 2022 and contains an effective date of vacancy of October 31, 2022. The reason for issuing it states: Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent. The landlord's agent testified that the tenant has not vacated the rental unit and sublet or assigned, and a secondary notice to end the tenancy was issued.

The second One Month Notice to End Tenancy for Cause has also been provided for this hearing. It is dated November 10, 2022 and contains an effective date of vacancy of December 31, 2022 and the landlord's agent testified that it was served by registered

mail on November 15, 2022. The reason for issuing it states: Tenant is repeatedly late paying rent.

The landlord has provided some e-transfer memos as well as a spreadsheet running from January 1, 2022 to September 1, 2022 showing the amounts owed, amounts paid and the date of payments. The landlord's agent testified that payments are sporadic. The landlord has spoken to the tenant who said that was the best he could afford, but the landlord has not given any requests in writing to pay rent on time.

The landlord's agent has no evidence from the tenant and has not seen any evidence of a payment plan.

The tenant testified that the landlord agreed to a payment plan, and copies of emails have been provided for this hearing wherein the landlord's father has agreed to split the rent in 2 payments. The evidence also shows that the landlord's father advised the tenant in an email that the landlord lives with the landlord's father, and requests rent payments at the email address of the landlord's father.

The tenant also testified that the landlord has requested that rent be increased to around \$4,000.00 starting on January 1, 2023 because of an increase in strata fees, interest and property taxes. Copies of the emails have also been provided for this hearing. The tenant did not agree, however on September 21, 2022 the landlord gave the tenant 2 options: agree to a 24% increase in rent or move out by September 30, 2022. The tenant replied by email indicating that no changes can be made to the tenancy agreement.

All rent payments have been made on time based on the payment plan agreed to by the landlord.

Analysis

Firstly, 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*, which can include the reason(s) for issuing it. In this case, the reasons for issuing the Notices are in dispute.

A sublet is a situation where a tenant moves out of a rental unit and sub-leases the rental unit to another person. An assignment is a transfer of responsibilities under a tenancy agreement to another person. In this case, the tenant has not moved out and

has not assigned or sublet, and I cancel the One Month Notice to End Tenancy for Cause dated September 23, 2022.

With respect to the other One Month Notice to End Tenancy for Cause, I have reviewed the evidentiary material, and it is clear that the landlord, through the landlord's father has agreed to the payment plans offered by the tenant. Therefore, the tenant cannot be said to be repeatedly late paying rent, and I cancel the Notice. The tenancy continues until it has ended in accordance with the law.

The *Act* also states:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

The emails from the landlord indicating that rent will be increased by 24% or to \$4,000.00 or more per month are not lawful. I order the landlord to comply with the *Act* as set out above.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant may reduce rent for a future month by that amount, or may otherwise recover it by serving the order upon the landlord and 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 landlord's application is hereby dismissed in its entirety without leave to reapply.

The One Month Notice to End Tenancy for Cause dated September 23, 2022 is hereby cancelled.

The One Month Notice to End Tenancy for Cause dated November 10, 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 tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount, 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: February 07, 2023

Residential Tenancy Branch