



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 was scheduled to convene at 11:00 a.m. on February 9, 2023 concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy; an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Both tenants attended the hearing and each gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlords joined the call.

One of the tenants testified that the landlords were served with the Notice of Dispute Resolution Proceeding and all evidence in person on October 18, 2022. The landlords have provided evidentiary material to the tenants and to the Residential Tenancy Branch. I accept the undisputed testimony of the tenant, and I am satisfied that the landlords have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Have the landlords established that a Notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- Have the tenants established that the landlords should be ordered to comply with the *Act* or the tenancy agreement with respect to entering onto the rental property?

Background and Evidence

The first tenant testified that this month-to-month tenancy began on January 1, 2020 and the tenants still reside in the rental unit. Rent was \$1,600.00 per month, which was reduced by the landlords to \$1,500.00 per month because the rental home was barely inhabitable at the commencement of the tenancy. Rent is due on the 1st day of each month and there are no rental arrears. On December 14, 2019 the landlords collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlords, and no pet damage deposit was collected. No move-in condition inspection report was completed at the beginning of the tenancy.

The tenant further testified that on September 21, 2022 the landlord served a letter to the tenants stating that the tenants had to vacate the rental unit by October 31, 2022, and a copy has been provided for this hearing. It is not dated and does not contain a signature of the landlord. No other notice to end the tenancy was given to the tenants.

The tenants did not lead any evidence with respect to the application for an order that the landlords comply with the *Act* or the tenancy agreement.

The second tenant testified that the termination letter has wording of a long-term rental, and the landlord said she would check the house, but never showed up. After the letter was served, there was another paper under the windshield wiper of the tenant's vehicle about parking.

Analysis

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*. Further, any notice to end a tenancy given by a landlord must be in the approved form, and ending a tenancy by an undated, unsigned letter is not lawful. The landlords have not attended the hearing, and have not served a notice in the approved form, and therefore I cancel it, and the tenancy continues.

The tenants have not lead any evidence sufficient for me to order that the landlords comply with the *Act* or the tenancy agreement, and I dismiss that portion of the application with leave to reapply.

Since the tenants have been partially successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlords in that amount, and I order that the tenants be

permitted to reduce rent for a future month by that amount, or may serve the order to the landlords and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the notice to end the tenancy said to be effective on October 31, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

The tenants' application for an order that the landlords comply with the *Act* or the tenancy agreement is hereby dismissed with leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenants be permitted to 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 09, 2023

Residential Tenancy Branch