



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDHAWA ENTERPRISES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, LAT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause; an order limiting or setting conditions on the landlord's right to enter the rental unit; an order allowing the tenant to change the locks to the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated September 21, 2022 was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord's right to enter the rental unit should be limited or allowed conditionally?
- Has the tenant established that the tenant should be permitted to change the locks to the rental unit?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on May 1, 2018 and reverted to a month-to-month tenancy after April 30, 2019, and the tenant still resides in

the rental unit. Rent in the amount of \$1,600.00 was payable on the 1st day of each month, however it was raised to \$1,610.00 instead of collecting a pet damage deposit because the tenant got a cat, which was verbally agreed by the tenant. Rent was increased to \$1,635.00 per month effective November 1, 2022 and there are no rental arrears. On April 3, 2018 the landlord collected a security deposit from the tenant in the amount of \$800.00 as well as \$25.00 for each of 2 key deposits, all of which are still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent also testified that on September 21, 2022 the landlord's agent posted a One Month Notice to End Tenancy for Cause to the door of the rental unit. Copies of 2 of the 3-page document has been provided as evidence by the tenant. It is dated September 21, 2022 and contains an effective date of vacancy of October 31, 2022. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

A copy of the Notice has not been provided by the landlord for this hearing, however the landlord's agent testified that 3 pages had been served.

The landlord's agent further testified that on September 7, 2022 about noon a fire alarm went off and a resident next to and underneath the tenant's rental unit noticed a fire in the garden box below. The fire department concluded that it was caused by the tenant, and the landlord's agent went inside the rental unit and saw cigarette butts outside the window on a shingled area below. Photographs have been provided for this hearing. The fire inspector said that cigarette butts came from this rental unit, and smoldered below for a couple of hours while the tenant was sleeping and someone tried to put it out. The fire inspector also saw the damage around the window casing caused by butting cigarettes on the casing. The landlord's agent has also seen the tenant smoking at the window and throw butts down.

The landlord's agent does not understand why the tenant has applied for an order limiting or setting conditions on the landlord's right to enter the rental unit or for an order permitting the tenant to change the locks to the rental unit. The landlord's agent has never been in the rental unit without the tenant answering the door or for an emergency.

The tenant testified that the tenant did not cause any damage in the apartment. The tenant has resided there for 4 or 5 years and has never had any issues with the landlord or neighbours, has always paid the rent.

The day of the fire, the tenant was sleeping and woke to a commotion at the window and very dark smoke from the wall under the rental unit. The tenant saw the fire, grabbed the tenant's cat and some stuff and left the apartment. The tenant didn't know how it started, but after about 20 or 30 minutes the residents were allowed back in.

The fire department asked if the tenant had a cigarette, and the tenant said "yes." The inspector said that they don't know who, but someone started a fire from smoking. The tenant advised that the tenant had been sleeping and was awakened by a fire alarm and the tenant's cat. The inspector took the tenant's name and number and said they'd call if they had any other questions, but they never called.

With respect to the other applications of the tenant, the tenant believes that the landlord's agent is engaging in aggressive behaviour. A previous roommate slipped a note under the landlord's door saying that he saw the tenant start a fire and dismantle the fire alarm, but the note was fake, the roommate wasn't there and the landlord's agent knew that. Since the landlord has provided evidence that he knows to be fake, the landlord's agent has malicious intent and the tenant doesn't want him in the tenant's home.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord's agent has never had any issues with the tenant as a neighbour, but the landlord wants the tenant evicted due to damages to ensure it doesn't happen again.

SUBMISSIONS OF THE TENANT:

The tenant believes that the landlord's agent has been malicious for the last several months, and neighbours might believe the tenant is unstable since the landlord has indicated that the tenant started a fire. It has had a negative impact on the tenant's life.

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*. The landlord must also establish that the Notice given was given in the approved form.

In this case the landlord has not provided a copy of the One Month Notice to End Tenancy for Cause, and the tenant has provided pages 1 and 2 of the 3-page form. Therefore, I cannot be satisfied what 3 pages the landlord gave or that the Notice given was in the approved form. Therefore, I cancel it, and the tenancy continues until it has ended in accordance with the law.

With respect to the balance of the tenant's application, it is important for a landlord to have keys to the rental unit for emergency purposes, for the tenant, the building and other residents. To allow a tenant to change the locks, the tenant must establish that the landlord has entered without complying with the *Act*. I am not satisfied that the tenant has established that or that the landlord's right to enter should be limited or allowed conditionally, and I dismiss those portions of the tenant's application without leave to reapply.

Since the tenant has been partially successful with the application, the tenant is 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 be permitted to 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 One Month Notice to End Tenancy for Cause dated September 21, 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 be permitted to reduce rent for a future month by that amount or may otherwise recover it.

The tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit is hereby dismissed without leave to reapply.

The tenant's application for an order permitting the tenant to change the locks to the rental unit is hereby dismissed without leave to reapply.

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 10, 2023

Residential Tenancy Branch