



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, LRE, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- an order that the landlord make repairs to the rental unit or property;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- 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.

All 4 of the named tenants and the landlord attended the hearing, and the landlord was accompanied by a support person. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The landlord testified that all evidence has been provided to the tenants and the landlord has received the tenants' evidentiary material. Therefore, all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing I explained to the parties that the Rules of Procedure specify that multiple applications contained in a single application must be related, and I found that the primary application of the tenants seeks an order cancelling a One Month Notice to End Tenancy for Cause. The hearing focused on that portion of the application, and the balance is dismissed with leave to reapply.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated February 17, 2023 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed term tenancy began on July 31, 2021 with 2 of the tenants, which reverted to a month-to-month tenancy after July 31, 2022 and the tenants still reside in the rental unit. Rent in the amount of \$3,400.00 is payable on the 31st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1,700.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family house.

There were 4 people named on the original tenancy agreement, who signed the Addendum. However 2 tenants moved out and assigned their tenancies in February. Several tenancy agreements have been provided for this hearing, and if it's considered to be a co-tenancy rent is \$3,400.00 per month, but if separate tenancy agreements are considered, rent is \$4,000.00 per month. The landlord created a separate tenancy agreement with the tenants (HC and JH). The tenants (LB and RP) no longer wanted to continue the tenancy and found people to replace them (HC and JH). The landlord returned the portion of the security deposit for the tenants who vacated, which was replaced by the newer tenants, and the landlord holds \$1,700.00 in total.

On February 18, 2023 the landlord served the tenants with a One Month Notice to End Tenancy for Cause by personally handing it to one of the tenants (IF), with the landlord's mother as a witness, and all tenants were gathered together. A copy has been provided by the tenants for this hearing and it is dated February 17, 2023 and contains an effective date of vacancy of March 31, 2023. The reason for issuing it states: Tenant is repeatedly late paying rent.

On January 31, 2022 the tenants sent a note to the landlord about a bank transaction, and stating that rent would be paid the following day, and it was. Rent due on May 31, 2022 was paid on June 1, 2022, but the landlord considered it a one-off and didn't do anything about it. However, rent due for June 30, 2022 was paid on July 1, 2022, and the landlord had sent a message on July 1, 2022 indicating that \$850.00 was missing. Rent due on July 31, 2022 was paid on August 1, 2022. The landlord sent another message on August 1, 2022 indicating that \$925.00 was missing. Rent due on September 30, 2022 rent was paid on October 1, 2022; rent due on November 30, 2022 was paid on December 1, 2022. On December 1, 2022 the landlord sent another message and the next day the rent was paid. Rent due on December 31, 2022 was paid on January 1, 2023.

Rent had to be paid by the last day of the month for the landlord's personal reasons, and the tenants never asked to have rent payable on the 1st day of each month. The Addendum to the tenancy agreement stated that the date was not negotiable. No other notices to end the tenancy had been issued.

The landlord further testified that rent was increased by \$100.00, which was verbally agreed to, however the landlord repaid the \$700.00 overpayment.

The first tenant (EB) testified that the landlord did not give sufficient notice that the landlord was very concerned about rent being late. In the past, a portion was forgotten until the following day. All tenants remained in communication with the landlord, and there was no problem with giving a portion late; no grievances were raised by the landlord about that.

The issues escalated because the landlord's mortgage rate had increased, which is the landlord's reason for evicting, so that rent can be raised for new tenants.

The tenants invited the landlord to pick up cash portions, at the landlord's request; the tenants wanted to speak about issues such as the landlord attending without notice, the illegal rent increase and about some repair issues not being taken care of in a timely manner. During that meeting the landlord and the landlord's mother expressed they were feeling pressured about a mortgage increase. At that point, the tenants asked if the landlord had any issues about the tenancy, and the landlord did not. The tenants believed they had landed on the same page, but a few days later, on February 1, the tenants received a letter from the landlord asking the tenants to accept the illegal rent increase, but after the discussion that was not what the tenants wanted to do.

When the tenants received the One Month Notice to End Tenancy for Cause, it was in direct retaliation to the tenants raising their grievances.

There is no good excuse for late rent, but one tenant would have forgotten and realized the next day, sometimes with a message from the landlord and sometimes not. The tenants thought they had a good relationship with the landlord and didn't hear that it was an issue.

Since the Notice was received, the tenants decided to try a new method of payment to ensure rent is on time.

The second tenant (IF) testified that the application that lead to the eviction was the request for an order that the landlord comply with the *Act* or the tenancy agreement.

Part of the discussion was about rent payments in detail and how the tenants would be paying. The landlord wanted the full amount in cash but the tenants weren't comfortable with that, but paid \$400.00 in cash once per month. The tenants had to alternate who took cash out of the bank, and some would pay by e-transfer. During the January 31, 2023 meeting the tenants told the landlord that they would not do that anymore, specifically with the raised rent.

Two of the original tenants moved out and the landlord requested the tenants to find replacement tenants. The tenants were happy to do so, and the Notice to end the tenancy was sudden. The overpayments were credited to the tenants, and cash payments ceased after the tenants requested that.

The third tenant (HC) testified that after the One Month Notice to End Tenancy for Cause was issued, the landlord served a Notice of Rent Increase, which confused the tenants. The leases caused a lot of confusion. The tenants want things to be done with documents from the Residential Tenancy Branch so that the parties are all on the same page.

The tenant is looking to move out, feeling overwhelmed. The landlord says that the tenant is breaking the lease, but there is a separate tenancy agreement.

Late payments were an error and won't happen again.

The tenant wants clarity about a notice to end the tenancy and a rent increase. The Notice of Rent Increase is dated March 5, 2023 and effective July 31, 2023, which increases rent from \$3,400.00 to \$3,468.00 per month. The landlord handed it to the tenant on March 5, 2023, about a week after issuing the One Month Notice to End Tenancy for Cause. It was accompanied by a letter from the landlord stating that it did not dismiss the Notice to end the tenancy, and that the landlord would not reinstate the tenancy if the Notice was upheld.

The landlord has provided a breakdown in an Xcel spreadsheet (in evidence) saying that the tenants owe the landlord \$24,000.00. The tenant believes it means the tenants are not on individual agreements, and if they are, the tenants owe \$24,000.00.

The tenant is on a separate agreement, and believes it's due the tenant giving notice to end the tenancy.

The tenant's tenancy agreement with the tenant (JH) are amended in pen, without signatures from the tenants, which was after the landlord gave the tenancy agreement to the tenant.

The fourth tenant (JH) testified that the evidence speaks for itself. There were no issues until the tenants asked for things to be done legally. The tenants asked if the landlord if she could increase the rent, but the landlord talked to tenant EB first, then cornered by the landlord's dad who said that the landlord wanted to increase the rent more. The tenant said that it would be talked over by all tenants. The landlord simply wants more money.

There was no lease until the tenant had a meeting with the landlord, and the Amendment wasn't signed by the tenant. There has been some shady behaviour. The tenants are good tenants; rent may have been late, but caused by the illegal rent increase, and was human error. There were no issues until the tenants told the landlord that the landlord had to comply with the law. The landlord then decided she wanted the tenants out. The tenants love the house and take care of it well.

SUBMISSIONS OF THE LANDLORD:

The landlord denies showing up without notifying tenants and made repairs on time. The landlord used proper documentation, and all tenant requests and grievances were addressed. During the January 31, 2023 meeting, the tenants never gave the landlord a chance to talk, but interrupted and denied any statement the landlord made. The tenants agreed to increases. All tenants signed agreements. Tenant (HC) said she was moving out due to her relationship. The Excel spreadsheet sets out the amount as if the tenants claimed they were not co-tenants. The landlord is not requesting the \$24,000.00.

SUBMISSIONS OF THE TENANTS:

None

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*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

In order to end a tenancy for repeated late rent, the minimum number of 3 late payments can be considered “repeated late rent.”

I have also reviewed all of the tenancy agreements, and I agree they are confusing.

The first names 2 tenants (EB and RP) signed by the landlord and both tenants for a tenancy commencing on July 31, 2021 for rent in the amount of \$3,400.00 payable on the 31st day of each month. It is accompanied by a Schedule of Parties naming tenants (IF and LP). It also contains a typewritten Addendum dated June 29, 2021 signed by the landlord and all 4 tenants.

The second tenancy agreement names 1 tenant (JH) for a tenancy commencing February 15, 2022 and in handwriting states: “continued from rental agreement dated July 31, 2021,” for rent in the amount of \$850.00 per month payable on the 31st day of each month, and in handwriting states: “total rental pay is \$3400 on previous rental agreement.” It also specifies a security deposit of \$425.00 by February 13, 2022, and is signed by the landlord and the tenant (JH) on February 13, 2022. It also contains an Addendum dated June 30, 2021 signed by the landlord and the tenant (JH).

The third tenancy agreement names 1 tenant (HC) for a tenancy commencing on July 31, 2022 for rent in the amount of \$875.00 payable on the 31st day of each month. It also states in handwriting, “continued from rental agreement dated 31 July, 2021.” It specifies a security deposit of \$437.50 by August 15, 2022, and contains an Addendum dated August 8, 2022, also signed by the landlord and the tenant (HC).

I have also reviewed the February 8, 2023 letter from the tenants to the landlord and the landlord’s response dated February 18, 2023. It provides, “a written confirmation that the Tenants occupying the Rental Unit under a single Tenancy Agreement in the amount of \$3400 per month since July 31, 2021, will be credited \$700.00 due to the overpayment since July 31, 2022.” It also states that the landlord can accommodate the tenants’ request of making the full rent payment by e-transfer going forward.

That letter is also of interest because it states: “Based on repeatedly paying rent late (at least three times), I’m issuing a one month to end tenancy to all tenants on Saturday, February 18 2023 in-person.” Where a tenancy agreement ends for a tenant, it ends for all tenants. In this case, the landlord created new tenancy agreements once 2 of the tenants vacated, which effectively increased the total rent from \$3,400.00 per month to \$3,400.00 plus \$850.00, plus \$875.00, which I do not believe was the intent of any of the parties, and why one of the tenancy agreements specifies \$875.00 per month is beyond me.

Guevara vs. Louie 2020 BCSC 380, considered in a Judicial Review proceeding involving late payment of rent and a notice to end the tenancy, and whether the landlord was estopped from enforcing a notice to end the tenancy by her past conduct. The tenant in that case paid the landlord by e-transfer. Some were late, but the landlord accepted it without complaint but with friendly reminders by the landlord.

The Court stated that ending a tenancy is a significant request only in accordance with the *Residential Tenancy Act*, and if disputed, an Arbitrator is required to consider the totality of the evidence. The Court also mentioned Policy Guideline 38 – Repeated Late Payment of Rent, which must be considered but would be a legal failure by an Arbitrator to properly consider the statutory interpretation of Section 47 without considering the entire circumstances given the context in which Section 47 (1)(b) finds itself. The Court also stated that an Arbitrator is to consider that the context of Section 47 is serious enough to warrant eviction, and an Arbitrator is to consider 4 things:

1. the frequency of the defaults in the context of the length of the tenancy;
2. the length of default;
3. the content and communication between the parties in respect of any of the defaults; and
4. the expectations of the parties.

The Supreme Court also found that by not considering estoppel, the Arbitrator committed an error. It also stated that “The distinction between waiver and estoppel is vital because the landlord relies on alleged defaults that occurred before she gave any indication that the required strict compliance with the requirement to pay rent on the first of the month.” Such a notice would have had to be clear. The landlord was required to give the tenant reasonable notice that strict compliance would be enforced before taking steps to end the tenancy for late payments, no such notice was provided to the tenants.

In this case, none of the late payments were beyond 1 day for partial rent. Rent for June 30 and July 31, 2022 resulted in a reminder note from the landlord, as well as the November 30, 2022 payment. Any late payments beyond that cannot be considered because they are after the date the One Month Notice to End Tenancy for Cause was served.

I also note that the landlord made another attempt to increase rent, but retracted that after 7 months and repaid the tenants, but the tenant (IF) testified that the landlord wanted the full amount in cash, and the tenants paid \$400.00 in cash once per month, alternating which tenant took cash out of the bank. A landlord may not indicate that a portion must be paid in cash; the tenants are not the landlord's convenient bank.

I am not satisfied that the landlord gave any reasonable notice that strict compliance would be enforced prior to serving a notice ending the tenancy.

Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlord 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 on the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated February 17, 2023 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 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.

The balance of the tenants' application is hereby dismissed with 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*.

Dated: June 18, 2023

Residential Tenancy Branch