



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 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; for 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 tenant and 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 agreed that all evidence should be accepted, and that service of the Notice of Dispute Resolution Proceeding should be accepted. Therefore, all evidence of the parties has been reviewed, and the evidence I find relevant to the application 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 March 29, 2023 was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 1, 2022 and reverts to a month-to-month tenancy after September 1, 2023, and the tenant still resides in the rental unit. Rent in the amount of \$1,400.00 is payable on the 1st day of each month. No security deposit or pet damage deposits were collected by the landlord. The rental unit is a suite on ground level; there are 2 suites in the building, and the landlord's daughter lives upstairs. The landlord lives in a separate house on the property with another suite also rented. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on March 29, 2023 the tenant was served with a One Month Notice to End Tenancy for Cause by taping it to the front door of the rental unit. A copy of the Notice has been provided by both parties for this hearing, and it is dated March 29, 2023 and contains an effective date of vacancy of May 1, 2023. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in ~~illegal~~ activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord didn't mind company come and go but when it got to the point of what the landlord saw, it was more and more with the tenant's son staying overnight. His car was disruptive to neighbors. It is a 1 bedroom, tiny 550 sq. ft. unit, and he uses electricity and water which is included in the rent. He also has his own key, and the landlord has seen other people with a key while the tenant and her son are at work. On April 10, 2023 a fellow in a security vehicle arrived on the property when the tenant was not home, who also had a key.

The tenant has only been on time with rent on one occasion. Rent has been paid on October 3, November 2, December 2, 2022 and January 3, February 2 and March 2, 2023, and copies of e-transfers have been provided for this hearing.

With respect to disturbances, the landlord testified that the tenant's son has a loud car and leaves late at different times, such as 3:00 a.m. The landlord has asked many times to go slowly, but no one cared. The landlord's daughter is tired of having them yell and scream at each other. The tenant's son parks in the landlord's daughter's parking spot, and has entered into her place upstairs.

There is no illegal activity alleged.

With respect to breach of a material term of the tenancy agreement, the landlord testified that all requests were verbal. However, the landlord has provided a recording of the tenant's son while washing his car, and he said he could do whatever he wants. The tenant hasn't given the landlord a key to the rental unit after changing the locks without the landlord's knowledge.

The tenant testified that in October the tenant told the landlord to replace the lock, but she didn't and the tenant forgot to give the landlord a key. However, the tenant doesn't trust that the landlord won't enter. The tenant and her son went on vacation and gave a friend the key from the tenant's son, who gave it back.

The tenant was hospitalized a few times and her son was at the rental unit to look after the tenant at night. The tenant had surgeries in October, November and January. The tenant's son does not live with the tenant, has his own address, but has dinner with the tenant, visits, and on occasion fell asleep and stayed overnight. He washed his car maybe once or twice, and he parks on the street.

The tenant's son used to go to the suite upstairs at the landlord's daughter's suite for haircuts. The tenant was not there when he went into the upper unit, but told the tenant that he went directly to the salon, not in her private space.

SUBMISSIONS OF THE LANDLORD:

The tenant's son is now living in the rental unit fulltime and taking advantage of the landlord fully, with bills, quiet enjoyment of the landlord's suite and that of the landlord's daughter and another tenant. The landlord has asked many times verbally about the loudness of the car and why he is there so much.

SUBMISSIONS OF THE TENANT:

Rent is paid on time; the delay is the bank and the tenant has no control over that. The tenant forgot to give the landlord a key, but things went sideways and the tenant does not trust the landlord.

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 (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

Firstly, as I explained to the parties, a landlord may not “invent” a reason for issuing a notice to end the tenancy for cause. In this case, the landlord crossed out the word “illegal” for an invented reason of “Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.” Therefore, that is not a valid reason, and cannot be considered.

I have reviewed the tenancy agreement and I accept that the rental unit is a small 1 bedroom space. A landlord may not prevent a tenant from having guests. The tenant testified that her son has his own apartment and does not reside on the rental property. I agree from the evidence that he is at the rental unit a lot, but I do not see that as being an unreasonable number of occupants, or any other occupants at all. The landlord has not provided any evidence that the tenant’s son has moved in, nor did the landlord testify that the tenant’s son moved any items into the rental unit.

With respect to repeated late rent, the minimum must be 3 late payments in order to end a tenancy for repeated late rent. The landlord testified that the tenant has been late in October, 2022 through March, 2023 inclusive by at least 1 day. The tenant testified that rent was always paid on time, except on 1 occasion, and if it was late, that’s the bank’s delay and the tenant has no control. Both parties have provided evidence to support their positions. The tenant has provided evidence of sending e-transfers on the 1st of each month, and the landlord has provided evidence of receiving the money the following day, which, according to the evidence of the financial institutions, should be sent within a half hour. If the landlord is set up with the financial institution to receive

transfers automatically, I agree that it should be received by the landlord the same day. However, if the landlord has not set that up, the landlord must open the email and provide a password to accept the payment. The landlord did not indicate which method is used, and I find it very likely, considering the tenant's evidence, that the landlord didn't accept the payment on the 1st day of the month even though it was sent on the first day of the month. Therefore, I am not satisfied that the landlord has established repeated late rent.

With respect to interference or disturbance of another occupant or the landlord, the landlord must establish that any interference was significant, or that any disturbance was or has been unreasonable. It's clear in the evidence that the parties just don't like each other anymore, but that is not a reason to end the tenancy. I have reviewed the landlord's evidence, which consists of statements regarding the tenant's son being on the property, his loud car, parking and use of storage not included in the tenancy. The statement of the landlord also indicates that other people on the property do not want to get involved with writing a complaint, hoping that the tenant will just move away. There is no evidence of a significant interference or unreasonable disturbance, other than the landlord simply wanting the tenant to go away.

With respect to a breach of a material term of the tenancy agreement, in order to end a tenancy for that reason, the landlord must inform the tenant in writing that certain events or behaviours are contrary to the tenancy agreement, and inform the tenant that if the events or behaviours are not corrected within a certain time period, which must be reasonable, the landlord will end the tenancy. In this case, the landlord has not provided any such letters. Therefore, this reason does not suffice for ending the tenancy.

Considering the testimony of the parties and the evidentiary material, I am not satisfied that the landlord has established any of the reasons for ending the tenancy, and I cancel the One Month Notice to End Tenancy for Cause dated March 29, 2023.

The landlord has also provided a document which appears to claim monetary compensation from the tenant. I do not have an application from the landlord, and therefore I will not be considering that evidence.

The tenant did not lead any evidence with respect to the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the tenant's application.

I have also reviewed the text messages, and I note that on December 19, 2022 the tenant advised that the tenant had replaced the door deadbolt and that the tenant would get a key for the landlord, however that has not happened. Pursuant to my authority under the *Act*, I order the tenant to provide a copy of the key to the rental unit to the landlord by no later than July 20, 2023. If the tenant fails to do so, the landlord will be at liberty to issue another One Month Notice to End Tenancy for Cause for the tenant's failure to comply with this order.

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 serve the order to 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 March 29, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby order the tenant to provide the landlord with a key to the rental unit by no later than July 20, 2023, and if the tenant fails to do so the landlord will be at liberty to issue another One Month Notice to End Tenancy for Cause for the tenant's breach of this order.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* and I order that the tenant 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: July 16, 2023