



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAKONYI HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

One of the named tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties each called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The parties agree that all evidence has been exchanged, with the exception of evidence provided by the tenants the day of the hearing. Any evidence that a party wishes to rely on must be provided to the other party even if they already have a copy because it is important for the parties to know what is before me. Since the tenants have not provided the late evidence to the landlord, I decline to consider it. All other evidence 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 November 11, 2023 was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on December 1, 2017, and one of the tenants (RJB) still resides in the rental unit. Rent in the amount of

\$1,100.00 was originally payable on the 1st day of each month, which has been increased and is now \$1,242.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided by the landlord as evidence for this hearing, which indicates a rental unit apartment #409.

The landlord's agent further testified that the tenants were served with a One Month Notice to End Tenancy For Cause by registered mail on November 13, 2023. A copy of the Notice has been provided by the tenants for this hearing, which specifies a rental unit #411, and it is dated November 11, 2023 and contains an effective date of vacancy of December 11, 2023. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant has not maintained the rental unit, which is affecting his own child as well. The smell of urine as soon as the door opens is evident. The tenant has done nothing about it. The urine will affect laminate and other flooring. A lot of items have been accumulated over time. The owners did a walk-through, and upon entering found that the amount of material in the residence is a fire hazard. It is unclean with pets in there and smells of urine. The owners gave the tenants an opportunity to get rid of garbage and clean up, but didn't get done what the landlord wanted. There's still too much stuff in there and it still stinks of urine.

The landlord' witness is another agent of the landlord, who testified that the witness sent the One Month Notice to End Tenancy For Cause by registered mail on November 13, 2023, and the tenant was handed a copy on November 11, 2023.

The parties completed a walkthrough in August, 2023 and found an extreme amount of garbage, boxes, old furniture and things taped to the ceiling, and clutter everywhere, with intense urine smell from cats. The home is very dusty and dirty, and described it as a hoarding situation.

The tenant told the witness that a lot of the items belonged to the tenant's girlfriend, who lived there and will be returning to retrieve it. The tenant was given ample opportunity

to clean up, and was offered help. The tenant has thrown out some stuff, but clouds cover the ceiling lights, which is a fire hazard. Photographs have been provided for this hearing.

The tenant was told to pay a pet damage deposit and was advised when garbage day is. Cockroaches travel throughout the building due to urine and feces and is affecting other areas of the building. There is no regular cleaning and the situation is escalating.

On August 7, 2023 the landlord's agents gave 24 hours notice to all tenants for an inspection, and tried to get into the suite the next day, but could not get in. The tenant had changed the locks. The witness saw the tenant's son throwing stuff into a dumpster on August 26, 2023.

The owners have asked for inspections to be completed, and on September 21, 2023 the witness wrote up a note asking the tenant to contact the witness to arrange an annual inspection but the tenant didn't reply. Another month went by, and on October 23, 2023 the witness texted the tenant asking if he had done some clean-up. The tenant replied saying that the other tenant was moving out so the stuff left there belonged to the other tenant. To make it easier for the tenant, the witness asked for photographs, and received 2 of the bedroom, which looked fairly tidy. However when the witness asked for more photographs, there was no further reply by the tenant.

On October 30, 2023 the tenant was served with another 24 hour notice for a yearly fire inspection with testers to test the smoke detectors in the suites, to take place on October 31, 2023. The test was completed, and just by walking in the front door it was clear that nothing had been cleaned and the smell was very intense.

The tenant testified that the tenant moved to this rental unit in July, 2019, having lived in another unit prior.

Since September, 2023 the tenant has been cleaning and getting rid of excess items. He has been washing walls and doing the best as he can, and works long hours. Now all 4 walls of the storage room are accessible.

The tenant further testified that he paid a \$250.00 pet deposit while living in another unit of the rental complex and never got it back.

The tenant agrees that cockroaches are spreading, but are not originating from the rental unit. The tenant asked for fumigation but the landlord's response was, "You have

a lot of stuff.” It was really bad, but the tenant has been doing his best since mid-October.

The tenant’s cat urinated on his son’s bed, and the tenant asked a neighbour who said that no odours had been noticed.

The landlord’s witness said she was doing the tenant a favour by letting the tenant know that the owners were considering eviction.

The fluff on the ceiling is batting for clothing, supposed to look like a cloud with LED lights in it to look nice, and the tenant does not believe it is a fire hazard.

The tenant’s witness testified that the 24 hour notice to enter wasn’t compliant with the law, but was missing some information, such as the unit number, it was not addressed to anyone, and there was no time for entry. It was slid under the door. The tenant was expecting the inspection the following week. A copy of the notice to enter has been provided for this hearing, dated November 9, 2023.

The witness agreed to help clean up and talk to the landlord due to the improper notice. The witness asked questions of the landlord’s witness when she arrived and was met with hostility and threats to evict immediately because there was an advocate present. When the witness asked to speak to the landlord’s agent, the person threatened to call police. The witness tried to show her that the information on the notice to enter was insufficient and the landlord’s witness took it out of the witness’ hand and tore it up. The tenant’s witness was dismissed by the landlord’s witness when the landlord’s agent returned. The tenant’s witness thought they would be happy that someone was there helping, but the tenant was told that the tenant’s witness was not allowed to be there for the inspection. The tenant was on the phone with a person from the Residential Tenancy Branch who confirmed that the notice to enter was insufficient.

The unprofessional attitude from the landlord’s witness was frightening, who threatened to call Social Services and put her foot in the door preventing it from being closed. The tenant invited the landlord’s agent in, and the landlord’s witness was interrupting by throwing insults at the tenant’s witness. The tenant’s witness stopped the landlord’s witness from following the tenant and the landlord’s agent, who spoke in another room. The tenant’s witness was repeatedly asked to get her foot out of the door, but she asked the tenant’s 13 year old questions. It was very unsettling, distressing and harassing.

The landlord's agent presented a notice to end the tenancy and the tenant's witness asked to see written notices and warnings, who replied that there is nothing in writing. The ambiguous conversations and arbitrary interpretations about what was and was not accomplished took place. The suite is cluttered, but not unclear.

SUBMISSIONS MADE BY THE LANDLORD'S WITNESS:

As per the testimony, it is still cluttered in the rental unit. The witness gave 24 hour notices to enter but was not permitted in. The tenant said he always had a pet. The landlord's witness does not know why a new tenancy agreement wasn't made.

SUBMISSIONS OF THE TENANT:

The tenant is disappointed that the landlord's evidence is not a complete illustration of the rental unit.

Analysis

Firstly, I have reviewed the tenancy agreement provided by the landlord for this hearing, which was signed by a landlord and by one of the tenants on December 1, 2017, and clearly shows the rental unit as #409. The Notice to end the tenancy specifies unit #411.

Also, the *Residential Tenancy Act* does not permit a landlord to enter a rental unit except as provided in Section 29:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Further, the *Act* specifies that:

30 (1) A landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

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*, except that if rent is due on the 1st day of the month, the effective date of vacancy must be at the end of the month following service.

I have also reviewed the notices to enter, and I agree that they are insufficient and not in accordance with the law. They contain no time for the inspection, and if served by sliding it under the door or other conspicuous place, it is deemed served 3 days later. Therefore, to enter “tomorrow” is contrary to the law. Further, the landlord may not require a guest of the tenant to leave during the inspection. The notice to enter for a yearly fire alarm inspection is also not in compliance, with no time for entering, and I am not satisfied that it was served at least 24 hours in advance.

The landlord has not provided a copy of the One Month Notice to End Tenancy For Cause. Considering the errors made by the landlord with the tenancy agreement, the unit numbers, the notices to enter, the refusal of the tenant to have a guest in the rental unit during inspections and the effective date of vacancy contained in the Notice, I agree that the landlord’s agents have not acted in a professional manner. I cannot in good conscience end the tenancy in these circumstances. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

Pursuant to my authority under Section 62 (3): “The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement, and an order that this Act applies,” I order the tenant to comply with the *Act* by maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in that amount in favour of the tenant as against the landlord, and I order that the tenant may reduce rent for a future month by that amount, or may serve the order upon the landlord and file it in the Provincial Court of British Columbia, Small Claims division for enforcement as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated November 11, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby order the tenant to comply with the *Act* by maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit.

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.

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: December 22, 2023

Residential Tenancy Branch