



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, LRE, OLC, FFT

Introduction

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

- an order cancelling a One Month Notice to End Tenancy For Cause;
- an order that the landlords provide service or facilities required by the tenancy agreement or the law;
- an order limiting or setting conditions on the landlords' right to enter the rental unit;
- 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.

The tenant and both landlords attended the hearing, however one of the landlords indicated that his name is not as written in the tenant's application. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the landlords indicated that all evidence of the parties had been exchanged. However, during the course of the hearing, the landlords indicated that some of the tenant's evidence had not been received by the landlords. 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 evidence is before me.

Also, at the commencement of the hearing I alerted the parties to the Rules of Procedure which indicate that multiple applications contained in a single application

must be related. I found that the primary application of the tenant deals with a notice to end the tenancy and recovery of the filing fee. The balance of the tenant's application is dismissed with leave to reapply.

Therefore, without any indication from the landlords what evidence has been received, other than an advertisement of the rental unit that the landlords had not received, I decline to consider that or any of the tenant's evidence relating to the balance of the tenant's application.

Issue(s) to be Decided

Have the landlords established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The first landlord (GJZ) testified that this month-to-month tenancy began on January 1, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$1,350.00 was originally payable on the 1st day of each month, which has been increased over time and is now \$1,397.65, and there are no rental arrears. On January 1, 2020 the landlords collected a security deposit from the tenant in the amount of \$675.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite, and the upper level is also rented. A copy of the tenancy agreement has been provided by the landlords for this hearing.

The landlord further testified that on November 6, 2023 the tenant was served with a One Month Notice to End Tenancy For Cause (the Notice) by registered mail. A copy of the Notice has been provided by the tenant for this hearing, and it is dated November 6, 2023 and contains an effective date of vacancy of December 31, 2023. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

When the landlords purchased the rental home on January 1, 2020 the tenant was already living in the rental unit. The parties signed a new tenancy agreement, and only 1 person was allowed. The landlords were told in September, 2021 that another person was living there, without the landlord's consent. The landlords did not talk to the tenant

about it; the tenant wouldn't allow that and the landlords do not know who the adult is who has been living there for 2 years, since September, 2021.

The den is not allowed as a bedroom, and the landlords don't know how many people live there now.

The second landlord (DS) testified that when the parties signed the tenancy agreement, it was only with the tenant. The basement suite has 1 bedroom and a den which cannot be used as a sleeping room due to fire hazard, but 2 people live there. The tenant should have given the landlords notice and had it approved, but he didn't for 2 years. The den has no egress window, except a window that exits into an enclosed garage, so there is no way for a person to get out from there.

The tenant testified that he has been renting the suite as a 2 bedroom suite since March or April, 2018. The tenancy agreement made in 2020 has the name of the tenant's son on it. No one lives with the tenant now.

On November 4, 2023 the tenant received a threatening email from the landlords with 2 options: to sign a mutual agreement to end the tenancy, or the landlord will serve a notice to end the tenancy. The tenant would not sign the mutual agreement and 2 days later received the Notice.

Emails in evidence show that the landlords were on site many times and knew that the tenant's son lived there. The landlords' evidence also shows that the landlords were aware since September, 2021. They even said hello to the tenant's son so to say they didn't know is a lie.

It came to light that the 2nd bedroom was not legal and the landlords are trying to pin it on the tenant, but the tenant has been paying for a 2 bedroom suite. The landlords want to do repairs to bring it up to standard, making this a "renoviction," not a notice to end the tenancy for cause.

The landlord put a padlock on the garage, and the placement of it is what puts the tenant's life in danger. The tenant called the fire department to have it removed. That was clearly the triggering event. The tenant didn't ask the landlords to remove it because they have a long history of taking the tenant's complaints and making it worse. If the tenant had asked, the tenant would expect to see many padlocks; the landlord does the opposite of what the tenant asks. The garage door already locks, and the padlock is suspicious.

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 provided by the parties 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.

The landlords installed a padlock on the garage of the rental unit, which is where the egress window is contained. The tenant alerted the fire department, and the landlords are annoyed that the tenant would do that.

I also accept the undisputed testimony of the tenant that the landlords have been aware since September, 2021 that the tenant's son lived with the tenant. To attempt to end the tenancy for that reason is ridiculous in my opinion. I am not satisfied that the landlords have established that the tenant has allowed an unreasonable number of occupants in the rental unit. I also find that the tenant is correct; the landlords want to renovate and the tenancy is in the way of that.

To end a tenancy for breach of a material term of the tenancy agreement, the landlord must give a written notice to the tenant stating that the term is material to the tenancy agreement, a reasonable time to correct the breach and stating that if the tenant does not correct the breach within that time the landlord will issue a notice to end the tenancy. The evidence in this case shows that the landlord did none of that, but gave the tenant an ultimatum to sign a Mutual Agreement to End Tenancy or the landlords will give a notice to end the tenancy.

I am not satisfied that the term of 1 occupant is a material term. There is nothing in the tenancy agreement indicating the number of occupants permitted to reside in the rental unit. The tenancy agreement states: "11. OCCUPANTS AND GUESTS: 3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy." The landlord has not talked to the tenant about it, and I am not satisfied that the landlords have issued the Notice in accordance with the *Act*.

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

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlords. I grant a monetary order in favour of the tenant as against the landlords in that amount, and I order that the tenant 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 and enforce it as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated November 6, 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 tenant as against the landlords 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 order is final and binding and may be enforced.

The balance of the tenant's 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: December 22, 2023

Residential Tenancy Branch