



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNE, AAT, FFT

Introduction

This hearing was convened by way of conference call on January 18, 2024 concerning an application made by the tenants seeking the following relief:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- an order cancelling a One Month Notice to End Tenancy For Cause or End of Employment;
- an order that the landlord allow access to the rental unit for the tenants and/or the tenants' guests; and
- to recover the filing fee from the landlord for the cost of the application.

Both named tenants 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 agree that all evidence has been exchanged, with the exception of late evidence provided by the tenants, which the landlord opposed inclusion. An applicant is required to provide evidence to the Residential Tenancy Branch site and to the respondent no less than 14 days prior to the hearing. The late evidence was uploaded to the Residential Tenancy Branch site on January 13, 2024, less than 5 days before the hearing. Since the landlord opposes inclusion of that piece of evidence, I decline to consider it. All other evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2023 was issued in accordance with the *Residential Tenancy Act*?

- Has the landlord established that the One Month Notice to End Tenancy For Cause or End of Employment dated December 6, 2023 was issued in accordance with the *Residential Tenancy Act*?
- Should the landlord be ordered to allow access to the rental property for the tenants or the tenants' guests?
- Should the tenants recover the filing fee from the landlord?

Background and Evidence

The landlord testified that the tenants moved into the rental unit on June 15, 2023 and paid a security deposit of \$1,400.00 as well as half a month's rent amounting to \$1,400.00. The parties entered into a tenancy agreement for a fixed term to commence on July 1, 2023 and reverting to a month-to-month tenancy after June 30, 2024 for rent in the amount of \$2,800.00 payable on the 1st day of each month. Currently the rental arrears are \$3,082.45. The tenants still reside in the rental unit. A copy of the tenancy agreement has been provided as evidence for this hearing.

On December 6, 2023 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by attaching it to the door of the rental unit. A copy has been provided for this hearing, and it is dated December 6, 2023 and contains an effective date of vacancy of December 19, 2023 for unpaid rent in the amount of \$682.45 that was due on November 1, 2023. The tenants paid \$1,400.00 rent for November, 2023, leaving a balance outstanding of \$1,400.00. The landlord credited \$600.00 for a 'wood allowance' and credited an additional \$117.55 for curtains and rods. That leaves a balance of \$682.45 outstanding for November, 2023.

On December 6, 2023 the landlord also served a One Month Notice to End Tenancy For Cause or End of Employment by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated December 6, 2023 and contains an effective date of vacancy of January 31, 2024. 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.

The rental property has been for sale as of September, 2023 and the landlord has had issues with being able to show it with written notice, or to access the inside. The landlord has now taken it off the market. Notice to enter was given by taping it to the door of the rental unit on November 14, 2023 effective on November 18, 2023.

The landlord also testified that the tenants have been served with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by attaching it to the door of the rental unit on January 2, 2024. A copy has been provided and it is dated January 2, 2024 and contains an effective date of vacancy of January 15, 2024 for unpaid rent in the amount of \$2,800.00 that was due on January 1, 2024. The tenants have not paid January, 2024 rent.

The first tenant (AL) testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) dated January 2, 2024 has also been disputed, and the hearing date is February 8, 2024.

With respect to the previous 10 Day Notice, the tenant communicated with the landlord that the tenants would be applying the security deposit to the rent because the tenants were planning to move out. The landlord did not give a proper notice to enter for a viewing on September 29, 2023, and upon forcing his way in, the landlord hit the tenant's shoulder and began verbally assaulting the tenant. The landlord created fear, uncertainty, extreme discomfort and the tenants needed to leave.

The landlord has been squatting on the back part of the property, which is not part of the tenancy agreement.

The landlord didn't reply to the tenant's suggestion of applying the security deposit to the rent for November, so the tenant took that as an agreement. The landlord also agreed by email that it was fine as long as the tenants left.

With respect to the One Month Notice to End Tenancy For Cause or End of Employment (One Month Notice), the landlord has not given proper notice to enter. The landlord seems to believe that taping a notice to the door means he can enter 24 hours after that.

The second tenant (WA) testified that when the tenants moved in, they agreed to rent in the amount of \$2,800.00 and 10 acres. However the landlord moved to the property in his trailer 3 days later and has been all over the property this whole time. The tenant tried to negotiate a discount, but the landlord refused.

The landlord keeps putting notices on the door to enter without waiting 3 days for service. The tenant's wife is sick, going through chemotherapy, and couldn't chance infection. There were about 13 people in the house, assaulting and insulting the tenants, and the tenants told the landlord that viewers had to sanitize hands.

SUMMISSIONS OF THE LANDLORD:

None

SUBMISSIONS OF THE TENANTS:

Applying the security deposit shows that the rent for November has been paid. The tenants have no problems with real estate showings as long as they are done with proper notice. The tenants also had to delay a chemotherapy session as a result of showings. The tenant contracted a viral infection with 12 people in the house.

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.

Dealing firstly with the One Month Notice, the tenant is correct that if a notice to enter is served to the tenants by posting it to the door or other conspicuous place it is deemed to have been served 3 days later. Also, a landlord must give no less than 24 hours notice to enter, and if posted, cannot expect to enter until 4 days after it is posted. I accept the undisputed testimony of the tenant that the notice in September was not given in accordance with the law, and therefore, the tenants were not required to give the landlord access, particularly considering the health issues of the tenant. Therefore, I am not satisfied that the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and I cancel the One Month Notice.

A tenant may not apply a security deposit to rent without the landlord's consent. Also, a tenant is required to pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. The tenants do not deny that rent is due for November, 2023 but expected the landlord to apply the security deposit to it. There are specific rules about a security deposit, and there is no evidence that the landlord agreed in writing to accept that.

The tenants did not pay November's rent in full, leaving \$1,400.00 outstanding, which the landlord has credited \$717.55, leaving \$682.45 outstanding. Since the tenants did not pay the amount within 5 days of receipt of the 10 Day Notice, I cannot excuse the tenants from paying the rent or cancel the 10 Day Notice.

The tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2023 is hereby dismissed.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenants. The tenants must be served with the order of possession which may be filed in the Supreme Court of British Columbia for enforcement.

The law also states that if the dismissal is in relation to a notice to end the tenancy for unpaid rent, I must grant a monetary order in favour of the landlord for that amount of rent. Therefore, I grant a monetary order in favour of the landlord as against the tenants for the unpaid rent of \$682.45. The tenants must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since the tenancy is ending, I dismiss the tenants' application for an order that the landlord allow access to the rental unit for the tenants or the tenants' guests, without leave to reapply.

Since the tenants have not been successful with the application the tenants are not entitled to recovery of the \$100.00 filing fee.

I make no orders or findings with respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2024. That matter is scheduled to be heard at a later date.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause or End of Employment dated December 6, 2023 is hereby cancelled.

The tenants' application for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2023 is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$682.45.

The tenants' application for an order that the landlord allow access to the rental property for the tenants or the tenants' guests is hereby dismissed without leave to reapply.

The tenants' application for recovery of the filing fee is hereby dismissed without 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: January 22, 2024

Residential Tenancy Branch