



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was scheduled to convene at 11:00 a.m. on March 1, 2024 concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; 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.

An agent for the tenants attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call.

The tenants' agent testified that the landlord was personally served with the Notice of Dispute Resolution Proceeding on January 24, 2024. I accept that testimony, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically for return of the security deposit?
- Should the tenants recover the filing fee from the landlord?

Background and Evidence

The tenants' agent testified that this tenancy began about 6 years ago. There is a written tenancy agreement, however a copy has not been provided for this hearing.

Rent in the amount of \$1,240.00 is payable on the 1st day of each month and there are no rental arrears. 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 suite.

The tenants' agent also testified that the 2nd named tenant moved out of the rental unit a year or a year and a half ago. The remaining tenant asked that his name be removed from the tenancy agreement, but the landlord wanted the tenant to agree to end the tenancy and sign a new tenancy agreement. The tenant was advised not to for fear that the landlord would increase the rent.

The landlord served the tenant with a One Month Notice to End Tenancy For Cause, and a copy has been provided by the tenant for this hearing. It is dated January 15, 2024 and contains an effective date of vacancy of February 29, 2024. The tenant has 2 children, one being autistic, and could not chance being homeless while awaiting this hearing, so the tenant has found a new rental and is in the process of moving out today.

The landlord does what she wants and doesn't care what the rules or the law is, and the tenants' agent fears that the landlord won't return the security deposit to the tenant unless ordered to. The tenants claim return of the \$550.00 security deposit. The landlord told the tenant to submit receipts to her for carpet cleaning, and copies of those have been provided for this hearing.

Analysis

Firstly, 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 law, which can include the reason(s) for issuing it. Since the landlord has not joined the hearing and has not provided any evidentiary material, I cancel the One Month Notice to End Tenancy For Cause.

Since the tenancy is ending, I decline to order the landlord to comply with the *Act*, regulation or tenancy agreement. However, a landlord must return a security deposit and/or pet damage deposit in full, with interest, to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount(s).

Since the tenant who resides in the rental unit 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 favour of the tenant as against the landlord in that amount. The landlord 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.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated January 15, 2024 is hereby cancelled.

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

I hereby grant a monetary order in favour of the tenant (JE) as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

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: March 01, 2024

Residential Tenancy Branch