



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC; FF

Introduction

This is the Tenants' Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing, which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

There were no issues identified with respect to service of documents.

When the Landlord IB began giving his oral testimony, the Mandarin Interpreter immediately interpreted the proceedings in a loud clear voice to the Landlords which made it very difficult for IB to be heard. I asked the Interpreter to please mute their end of the conversation while the Landlord testified, which she kindly did. I confirmed throughout the Landlord's testimony that the Interpreter was able to interpret what the Landlord was saying, that the Tenants understood what was being said, and that they did not have any questions. When the Landlord had finished giving his testimony, the Tenants unmuted their end of the call.

Issue(s) to be Decided

Is the Notice to End Tenancy for Cause issued January 22, 2018 (the "Notice") a valid notice to end the tenancy?

Background and Evidence

This tenancy began on March 24, 2017. Monthly rent at the beginning of the tenancy was \$1,150.00, due on the first day of each month. The Tenants paid prorated rent for March, 2017. The Tenants paid a security deposit of \$575.00. The tenancy agreement was a one year

lease, ending on April 1, 2018. At the end of the fixed length of time, the tenancy continues on a month-to-month basis.

The Landlord IB hand delivered the Notice to the Tenants on January 29, 2018. The Notice provides the following reasons for ending the tenancy:

REASONS FOR THIS ONE MONTH NOTICE TO END TENANCY (check all boxes that apply):	
<input type="checkbox"/>	Tenant is repeatedly late paying rent.
<input type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/>	put the landlord's property at significant risk.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
<input checked="" type="checkbox"/>	damage the landlord's property.
<input type="checkbox"/>	adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
<input type="checkbox"/>	jeopardize a lawful right or interest of another occupant or the landlord.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input checked="" type="checkbox"/>	Tenant has not done required repairs of damage to the unit/site.
<input type="checkbox"/>	Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
<input type="checkbox"/>	Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.
<input type="checkbox"/>	Rental unit/site must be vacated to comply with a government order.
<input type="checkbox"/>	Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.
<input type="checkbox"/>	Tenant has assigned or sublet the rental unit/site without landlord's written consent.
<input type="checkbox"/>	Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.
<input type="checkbox"/>	Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.
<input type="checkbox"/>	Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
DETAILS OF CAUSE(S): Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).	
BRAND NEW KITCHEN COUNTERS SHOW BURNED SPOTS	

The Landlord IB gave the following testimony:

The Landlord testified that the rental unit was under renovations at the beginning of the tenancy, which the Tenants agreed to in order to move in early. The Landlord stated that the Tenants did not want the contractor to have a key to the rental unit, so the Tenants agreed to be home and to allow the contractor into the rental unit in order to finish the renovations. The Landlord stated that the Tenants were not home when the contractor arrived the day after the Tenants moved in, and that this caused difficulties between the contractor and the Landlord.

With respect to the first reason provided on the Notice for ending the tenancy, the Landlord confirmed that he did not mean that the Tenants, or a person permitted on the property by the Tenants, had engaged in illegal activity. He stated that he just wants the Tenants to fix or replace the countertops.

The Landlord testified that the Tenants damaged the brand new kitchen countertop by burning it with a hot kettle. The Landlord wants the Tenants to repair the damage. The Landlord believes he has given them reasonable time to make the repairs, but the Tenants refuse to do the repairs

until they are ready to move out of the rental unit. The Landlord stated that the security deposit will not be enough to cover the cost of replacing the counter.

The Landlord is concerned about his right to access the rental unit. He stated that the Tenants were not giving him due access. He also stated that he is retired, that the rental property provides him income, and that he cannot rely on the Tenants to “keep my property in top shape”. The Landlord stated that the photograph that the Tenants provided of the damage to the countertop does not show the extent of the damage.

The Tenant YX gave the following testimony:

The Tenant stated that the Tenants will repair the countertop before they move out. She stated that the burn was only about the size of a fingernail and that there may be other small damages which will require repair. The Tenants want to do all the repairs at the end of the tenancy.

The Tenant stated that she is concerned about their right to quiet enjoyment of the rental unit. She stated that the Landlord is harassing the Tenants. The Tenant stated that the Landlord wanted the Tenants to confirm every month that they are not going to move out, which is contrary to what the Act requires.

Analysis

When a tenant seeks to cancel a notice to end a tenancy, the onus is on the landlord to show sufficient evidence that the tenancy should end for the reasons provided on the notice.

In this case, I find that the Landlord has not provided sufficient evidence to end the tenancy. The Director has not made an Order that the Tenants must make repairs to the rental unit. There is no evidence that the damage to the counter presents a danger to the health or safety of occupants or the Landlord, which in any event was not one of the reasons provided on the Notice. Therefore, the Notice is cancelled and the tenancy will continue until it is ended in accordance with the provisions of the Act.

For the information of the parties, Section 44 of the Act provides the ways that tenancies end in British Columbia. A tenant is not required to confirm that they will be continuing to rent on a month by month basis, only to provide due notice when they want to end the tenancy. Section 44 of the Act states:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];

- (i.1) section 45.1 *[tenant's notice: family violence or long-term care];*
- (ii) section 46 *[landlord's notice: non-payment of rent];*
- (iii) section 47 *[landlord's notice: cause];*
- (iv) section 48 *[landlord's notice: end of employment];*
- (v) section 49 *[landlord's notice: landlord's use of property];*
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify];*
- (vii) section 50 *[tenant may end tenancy early];*

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

[Reproduced as written.]

The parties both brought up issues that suggest that they are unaware of their rights and responsibilities as a landlord and a tenant. I advised the parties that I would be providing some information in my Decision with respect to the Landlord's right to access the rental unit and the Tenants' right to peaceful enjoyment and the requirement to make repairs for damages caused by the Tenants. Sections 28, 29 and 32 of the Act provide clarity with respect to these issues, and state:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

- 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).

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[Reproduced as written.]

The parties are also encouraged to access the Residential Tenancy Branch's website at www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies for further important information about tenancies in British Columbia.

The Tenants have been successful in cancelling the Notice and I find that they are entitled to recover the cost of the \$100.00 filing fee from the Landlord. Further to the provisions of Section 72 of the Act, the Tenants may deduct \$100.00 from future rent due to the Landlord.

Conclusion

The One Month Notice to End Tenancy for Cause issued January 22, 2018, is cancelled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

The Tenants may deduct \$100.00, representing recovery of the cost of the filing fee, from future rent due to the Landlord.

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: April 04, 2018

Residential Tenancy Branch