



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, RR, FFT

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; orders for the landlord to provide services or facilities; and, authorization to reduce rent payable. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that both parties received the documents submitted by the other party.

I noted that included in the landlord's evidence was a 10 Day Notice to End Tenancy for Unpaid Rent dated January 2, 2019 but the tenant had not filed to dispute a 10 Day Notice. Both parties provided consistent testimony that the tenants paid the rent on January 2, 2019 thereby nullifying the 10 Day Notice.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause dated January 5, 2019 be upheld or cancelled?
2. Is it necessary and appropriate to issue orders for the landlord to provide services or facilities to the tenants?
3. Have the tenants established an entitlement to reduce rent payable?

Background and Evidence

The tenancy started on June 1, 2012 and the tenants paid a security deposit of \$650.00. When the tenancy formed the rent was set at \$1,300.00 payable on the first day of every month. The tenants are currently required to pay rent of \$1,518.00 per month. The rental unit is one of four rental units in the building. There is a common laundry room for all of the tenants. There is also a "meter room" where the BC Hydro meters are located.

1 Month Notice to End Tenancy for Cause

On January 5, 2019 the landlord posted a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on the door of the rental unit. The tenants filed to dispute the 1 Month Notice within the time limit for doing so.

The tenants provided a copy of the 1 Month Notice but the landlord did not. The landlord did not have a copy of the 1 Month Notice before her during the hearing. I have relied upon the copy provided by the tenants and the tenant's description of the content on the 1 Month Notice served upon him.

I noted that the 1 Month Notice submitted by the tenants is an old version of a 1 Month Notice that does not include a "Details of Cause" section that is on the form currently approved by the Director. I could not see the publication date of the 1 Month Notice from the picture uploaded by the tenants. I asked the tenant to read the publication date on the 1 Month Notice served upon him. The publication date reads: "2011/03".

I also noted that the landlord had ticked only one box that corresponds to a reason for ending the tenancy under section 47 of the Act; however, the landlord made several hand-written notations in the margins. The landlord indicated that the issues she has with the tenants do not necessarily correspond to the boxes provided on the form.

The one box that was ticked indicates the landlord was ending the tenancy due to the tenants not making required repairs for damage to the property. The only damage described on the 1 Month Notice pertains to broken window locks; however, in the tenant's details of dispute the tenants indicate that issue was fixed. During the hearing, the landlord indicated the damage was related to burn marks in the kitchen flooring; however, that was not indicated on the 1 Month Notice before me.

In these circumstances, I informed the parties that the 1 Month Notice was not in the approved form and I was not going to amend it considering the landlord was raising a repair issue that was not identified on the 1 Month Notice. As such, I found the 1 Month Notice invalid and unenforceable and I would not end the tenancy based on the 1 Month Notice before me. I provide further findings and reasons in the analysis section of this decision.

Services or facilities

The tenant pointed out that the tenancy agreement provides that "limited" storage is included in the rent and that the condition inspection report described the limited storage as being: storage for "one bike per person in laundry room" and storage "in meter room as needed by tenant".

It was undisputed that in August 2018 the landlord instructed the tenants to remove their belongings from the meter room by way of a letter whereby the landlord indicates the city

prohibited such storage. During the hearing, the landlord acknowledged her letter was erroneous and that it was BC Hydro that raised issues with respect to the storage of possessions in the meter room. The landlord stated that she will permit the tenants to store items in the meter room so long as it does not interfere or otherwise contradict the requirements of BC Hydro. The landlord suggested that the tenants contact BC Hydro to determine what their requirements/limitations are for storage in the meter room. The tenant stated he would abide by BC Hydro requirements in storing possessions in the meter room and was satisfied this issue was resolved.

It was also undisputed that in October 2018 the landlord instructed the tenants to not store bikes in the common areas after an inspection by the fire department whereby the fire department reported that impeding egress was a violation of the fire code. The violation notice indicates that hanging the bikes could be a possibility.

The landlord did not serve the tenants with a *Notice Terminating or Restricting a Service or Facility* (RTB-24) or reduce the rent for the loss of storage.

The tenant accepts that the bikes cannot block egress but was of the position that if the bikes are hung from the wall or ceiling is a possibility. The tenant submitted that he was willing to pay for the cost to purchase and install the bike hangers. However, the tenant submitted that the landlord was only willing to permit bike storage in the laundry room if the tenants paid an additional \$30.00 per month to the landlord.

The landlord appeared to acknowledge that hanging the bikes would alleviate the egress issue but that according to her insurance provider if she permits storage in the laundry room she will have to inspect the laundry room once per week and that costs her to travel to the residential property.

The landlord also raised an issue with multiple bikes being stored in the common laundry room and the lack of cooperation from the tenants in identifying which bike belonged to which tenant.

Rent reduction

The tenant withdrew his request for a rent reduction, without prejudice, at this time as he was satisfied that a workable resolution was reached during this proceeding.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Notice to End Tenancy

Section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord.

The Director has the authority to approve forms pursuant to section 10 of the Act, which provides:

Director may approve forms

- 10 (1) The director may approve forms for the purposes of this Act.
- (2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The Director, as delegated to an Arbitrator, may amend a Notice to End Tenancy where to do so would not be prejudicial to the tenant.

The currently approved 1 Month Notice to End Tenancy for Cause provides “tick boxes” to indicate the reason(s) for ending a tenancy that correspond to section 47 of the Act. There is also a section on the approved form entitled “Details of Cause” that requires the following information: *Include any dates, times, people or other information that says who, what, where or when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).*

The 1 Month Notice that is the subject of this proceeding was an old version of the 1 Month Notices that was published in 2011. This old version has the “tick boxes” but does not have the “Details of Cause” section. In keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) for its issuance and the particulars that have lead the landlord to issue the Notice so that the tenant may adequately respond or prepare a defence if they are disputing the Notice.

The only box ticked on the subject 1 Month Notice indicates the tenants have not repaired damage to the property. The landlord’s hand written notes on the Notice suggest the damage is related to broken window locks; however, in filing their Application for Dispute Resolution the tenants indicate that issue was fixed. During the hearing, the landlord indicated the damage that remains unrepaired is related to the burn marks in the kitchen flooring; however, that was not indicated on the 1 Month Notice that is the subject of this proceeding. As such, I find the 1 Month Notice issued to the tenants on January 5, 2019 did not sufficiently identify the actual reason the landlord seeks to end the tenancy and I do not amend the 1 Month Notice.

I also note that several of the other hand written notes the landlord made on the subject 1 Month Notice do not correspond to a reason for ending a tenancy under section 47, such as allegations the tenant is passive aggressive or uncooperative.

In light of the above, I find the 1 Month Notice issued to the tenants on January 5, 2019 is not in the approved form and I decline to amend the form. Accordingly, the subject 1 Month notice is unenforceable and I decline to end the tenancy based on the Notice. Therefore, I grant the tenants' request for cancellation of the 1 Month Notice to End Tenancy for Cause and the tenancy continues at this time.

Since I have cancelled the 1 Month Notice because it is not in the approved form and I have not given further consideration to the landlord's reasons for ending the tenancy the landlord is permitted to serve the tenants with another 1 Month Notice that is in the approved form if she so chooses. However, I strongly encourage the landlord to familiarize herself with the Act and reasons for ending a tenancy and try to work with the tenants to resolve their differences before doing so.

Services and Facilities

Where a landlord seeks to terminate or restrict a service or facility provided to the tenant under their tenancy agreement, the landlord must do so in a manner that complies with section 27 of the Act. Storage is a service or facility pursuant to the definition in section 1 of the Act.

Section 27 provides as follows:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

[Reproduced as written with my emphasis underlined]

The tenancy agreement provides that the tenants are to have “limited” storage as a service or facility included in their monthly rent payment. The tenancy agreement, and its addendum, do not elaborate on what is meant by “limited” storage and I rely upon the condition inspection report as reflecting the parties’ agreement with respect to “limited” storage. As such, I find the tenants are entitled to receive and the landlord is obligated to provide the tenants with storage for one bike per person in the laundry room and storage in the meter room.

I do not consider bike storage in the laundry room and storage in the meter room to be essential services or a material term. Accordingly, the landlord may terminate or restrict these services or facilities by complying with section 27(2) of the Act. This means issuing the tenants with a *Notice Terminating or Restricting a Service or Facility* (RTB-24) at least 30 days in advance and reducing the rent accordingly. The landlord did not comply with section 27(2) and the tenants remain entitled to these storage facilities until such time the landlord lawfully terminates the service or facility, if ever.

The landlord may not charge additional rent or a fee for a service or facility that is included in the rent, even if that means the landlord has to monitor the common areas or laundry room. Costs associated to monitoring and managing a rental property is a cost of doing business as a landlord. A landlord’s compensation comes in the form of rent and the rent in this case already includes storage. Therefore, the landlord must not require or demand the tenants pay any additional amounts to receive the services or facilities they are already entitled to receive under their tenancy agreement.

Since there are two persons occupying the rental unit, I find the tenants entitled to storage for two bikes in the laundry room. I appreciate that ingress and egress to the common laundry room must not be impeded for safety reasons. I find the tenant’s proposal to hang the bikes so that they are not on the floor to be reasonable and appears as though it would comply with the requirements of the fire department. I also find it reasonable that the landlord be able to identify which bike belongs to which tenant since there are multiple units in the building. Therefore, I **order the following:**

- 1. The landlord shall point to the area the tenants may store their two bikes in the common laundry room within one week of receiving this decision.**
- 2. As agreed by the tenant, the tenants shall be responsible for the cost to install bike hangers.**

3. **The tenants shall identify their bike(s) by either making an identification on the bike itself, or by taking a picture of the bike(s) and giving the photograph(s) to the landlord and identify the bike(s) as belonging to the tenants. If the tenants change bikes it will be upon the tenants to identify the new bike as belonging to them.**
4. **The tenants may not store any more than two bikes in the laundry room.**

As for storage in the meter room, the tenants remain entitled to store possessions in the meter room so long as the storage does not constitute a hazard or otherwise interfere with accessing meters or conflict with BC Hydro requirements. The tenants shall attempt to determine the appropriate storage for the meter room with BC Hydro; however, if BC Hydro will only communicate with the landlord on this matter it will be up to the landlord to determine BC Hydro requirements and communicate them to the tenants.

Rent Reduction

The tenant withdrew this request, without prejudice, since a workable solution was reached during the hearing with respect to the storage issues. As such, I dismiss this component of the tenants' claim with leave to reapply, if necessary.

Filing fee

The tenants' application had merit and I award the tenants recovery of the \$100.00 filing fee paid for their application. The tenants are authorized to deduct \$100.00 from a subsequent month's rent in order to satisfy this award and in doing so the landlord must consider the rent paid in full.

Conclusion

The 1 Month Notice dated January 5, 2019 is cancelled because the Notice is not in the approved form. The tenancy continues at this time. I have not made any findings with respect to the landlord's reasons for ending the tenancy and the landlord is at liberty to issue another Notice to End Tenancy in the approved form if she chooses.

The landlord is obligated to provide the tenants with storage for two bikes in the laundry room and storage in the meter room until such time the services or facilities are terminated in a manner that complies with section 27(2) of the Act, if ever. I have issued orders to both parties with respect to storage in this decision.

The tenants' request for a rent reduction is dismissed with leave to reapply.

The tenants have been awarded recovery of the filing fee. The tenants are authorized to deduct \$100.00 from a subsequent month's rent to satisfy this award and in doing so the landlord must consider the rent to be paid in full.

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: February 20, 2019

Residential Tenancy Branch