



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALBERNI TOWERS HOLDINGS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC LA LRE MT OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 15, 2019 and amended on October 23, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated October 4, 2019 (the "One Month Notice");
- an order authorizing the Tenants to change the locks to the rental unit;
- an order suspending or setting conditions on the Landlords' right to enter the rental unit or site;
- an order granting more time to make the Application; and
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement.

The Tenants attended the hearing. The Landlords attended the hearing and were assisted by S.S. The Tenants, the Landlords, and S.S. provided a solemn affirmation at the beginning of the hearing.

The Tenants testified the Notice of Dispute Resolution Hearing package and amendment were served on the Landlords in person. The Landlords acknowledged receipt. Further, the Landlords testified that documentary evidence in response to the Application was served on the Tenants in person. The Tenants acknowledged receipt. No issues were raised with respect to service or receipt of these packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' requests for an order cancelling the One Month Notice and for more time to make the Application, with leave to reapply.

With respect to the Tenants' request for more time to make the Application, section 66(1) of the *Act* permits the director to extend a time limit established under the *Act* in "exceptional circumstances". In this case, the Tenants acknowledge receipt of the One Month Notice on October 5, 2019. Pursuant to section 47(4) of the *Act*, the Tenants had 10 days after receipt – until October 15, 2019 – to dispute the One Month Notice by making an application for dispute resolution. Although there appears to have been a brief delay in processing the Application, documents received from Service BC confirm the Application was made on time on October 15, 2019. Therefore, I find that additional time is not required, and the Application can proceed on the merits.

Issue to be Decided

Are the Tenants entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began on August 1, 2012 and continues on a month-to-month basis. Rent is due in the amount of \$738.30 per month. The Tenants paid a security deposit of \$350.00, which the Landlord holds.

The Landlords wish to end the tenancy. Accordingly, the Landlords issued the One Month Notice, which the Tenants confirmed was received on October 5, 2019. The One Month Notice was issued on the following bases:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has significantly engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

Specifically, T.D. testified that on October 2, 2019, O.S. knocked over and damaged several planters on the rental property. She was also observed to be yelling and swearing by C.R., an occupant of the rental property, who provided brief testimony regarding the event. She testified that O.S. was hysterical and that the door was not locked as claimed by O.S. Photographic evidence depicting the overturned planters and soil spilled on the ground was submitted into evidence.

In addition, T.D. testified that the Tenants continue to smoke on the rental property and leave cigarette butts on the ground. S.S. confirmed that the original tenancy agreement permitted the Tenants to smoke but that on August 1, 2018 the Landlord established a rule prohibiting smoking. Photographic evidence depicting cigarette butts on the ground was submitted into evidence.

In reply, O.S. acknowledged that she caused the planters to be overturned. She testified she was outside the rental unit and recognized a need for medicine to treat her epilepsy. However, the door to access the building was locked. O.S. testified that she started to panic, was shaking, and felt like she would black out. O.S. acknowledged that she moved the planters in front of a camera to try to get help, spilling the contents in the process. She called for help and C.R. came outside.

With respect to smoking on the rental property, the Tenants testified that the tenancy agreement permits them to smoke. However, N.C. did acknowledge that the cigarette butts depicted in the Landlords' photographic evidence were his and that they were left inadvertently.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons described therein. In this case, the One Month Notice was issued on the bases identified above.

After careful consideration, I find the Landlords have not provided sufficient evidence that the Tenants significantly interfered with or unreasonably disturbed another occupant or the Landlords or put the Landlords' property at significant risk. While I accept that O.S. moved the planters, causing them to overturn and spill the contents, it was not disputed that this occurred in the context of a perceived medial emergency. In addition, the extent of any damage to the planters or other of the Landlords' property remained unclear at the end of the hearing. It appears the Landlords could have simply asked the Tenants to clean up the overturned planters. However, I was not referred to any evidence to indicate the Landlords did so. I also find there was no evidence of other instances when the Tenants' behaviour interfered with or disturbed other occupants or the Landlords or put the Landlords' property at significant risk.

With respect to smoking at the rental property, I find that smoking at the rental property is not a basis for ending the tenancy. While I acknowledge the Landlords' intent to create a healthy living environment, neither party to a tenancy agreement can unilaterally change its terms. N.C. acknowledged the cigarette butts depicted in the Landlords' photographic evidence were the Tenants. However, leaving a small mess as depicted in the photographic evidence is not a basis for ending a tenancy. As above, the Landlords could have simply asked the Tenants to clean it up. However, I was not referred to any evidence to indicate the Landlords did so.

Finally, I find there was insufficient evidence of illegal activity to justify an end to the tenancy.

Considering the above, I order that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

I order that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*.

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: November 25, 2019

Residential Tenancy Branch