



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude within the time allotted and I adjourned the hearing to continue later in the day on June 2, 2022. However, the hearing did not conclude again, and I adjourned the hearing to continue on June 29, 2022 at 9:30 a.m. The landlord and both tenants attended on all occasions, and the landlord was represented by an agent on all occasions. The landlord's agent and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged except for a copy of the tenancy agreement provided by the tenants and a letter provided by the landlord. With the exception of those 2 documents, all evidence has been reviewed and only the evidence relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated March 28, 2022 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 1, 2019 and the tenants still reside in the rental unit. Rent in the amount of \$2,500.00 is payable on the 1st day of each month and there are no rental arrears. On September 1,

2019 the landlord collected a security deposit from the tenants in the amount of \$1,250.00 as well as a pet damage deposit in the amount of \$1,250.00, both of which are still held in trust by the landlord. The rental unit is a single family dwelling.

On March 28, 2022 the landlord's agent posted a One Month Notice to End Tenancy for Cause to the door of the rental unit. A copy has been provided for this hearing by the tenants and it is dated March 28, 2022 and contains an effective date of vacancy of April 1, 2022. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site/property/park
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The Details of the Event(s) section states: "Disgruntled with neighbour over various issues, disgruntled with landlord over various issues, property damage with no repair, illegally using other parts of property not belonging to there tenancy; neighbour, landlord, damage no repair; illegally use of property."

The landlord's agent further testified that the tenants have a fairly large family and had an uncle and some cleaning lady or something living in the rental unit, and the landlord's agent doesn't know how many people. The landlord told the tenants they couldn't sublet, and the tenants told the landlord's agent that the people lived there.

The tenants have parked vehicles on the lawn and anywhere, which has ruined the grass. It was not repaired prior to the issuance of the Notice, so the repair now is not relevant. The tenants have also caused damage to the back of the house; the fascia board is broken. The tenants also broke a fence and the landlord's agent testified that any repairs that were required have not been done by the tenants. Also, the concrete floor in the rental home is cracked, which the landlord's agent believes is from the tenants chopping wood in the basement.

The landlord's agent doesn't know how many people live in the rental unit but believes the tenants' uncle still lives there.

There are 5 acres and the landlord works on the property. The tenants have provided evidence of people driving up to the driveway, making it difficult to show the property when

it was for sale. The tenants' evidence also shows issues that the tenants have with the landlord and neighbours, which is the reason for ending the tenancy.

The tenant (RH) testified that the tenants actually moved in on August 1, 2019, which is the date on the tenancy agreement. The tenants and a 21 year old special needs daughter and the tenants' baby lived there as well as a friend who was going through cancer treatments. The friend lived there from August 1, 2019 to August 1, 2020 and then moved on. No one else resided in the rental unit from August 1, 2020 to February 15, 2021. An uncle, wife and child stayed for just over a year and after they moved out, no one else has stayed there. The most has been 7 people. The other house on the property, which is identical inside, now has 9 people. It's a 4000 square foot house with 5 bedrooms, 5 bathrooms, 2 kitchens, 2 laundry hookups, 2 living rooms and 2 dining rooms. With 7 people, there were still empty rooms, so it has not been an unreasonable number of people. The rental home has a basement suite and the landlord never said they were not to sublet, but the landlord knew that the tenants have 2 kids, not a large family.

The tenants built another room in the basement after the landlord gave permission asking the tenants to finish the basement. Also, there was a gate placed on the other property. It is not smashed or damaged, but the side bar shifted out of the pole and it was never properly fastened to the top rail, so it fell over. The tenants pulled the bar over, but it still needs to be finished; there are not enough supports.

The landlord has never asked the tenants to do any repairs, so the tenants don't know what that means in the One Month Notice to End Tenancy for Cause. In 2020 the tenants fixed the plumbing and didn't even ask to be reimbursed. The tenants have fixed numerous things including repair to drywall and re-painting the basement due to dogs being down there previously.

There was no move-in condition inspection report completed when the tenants moved in, just the landlord stating: "Just realize that the condition is what we expect at the end." Everything was not in good working order at the beginning of the tenancy, such as the garage door opener, the stove in the basement, the furnace, and the landlord didn't replace doors that had been kicked in by previous tenants. The tenants bought the new stove for the basement and a garage door opener. The furnace has never been fixed, or the water pressure. The tenant does not believe the landlord has fixed anything.

When the tenants moved in there was no grass and the tenants parked on the lawn when it was frozen. The tenant's uncle put ruts in the lawn but the tenants repaired it and it's beautiful.

The damage described by the landlord's agent is hardy board falling off, which was like that when the tenants moved in. The fascia boards were like that from previous tenants.

The tenants have a log splitter, so the only thing cut downstairs would be kindling for the fireplace, and the tenants did not damage or crack the floor. Kindling has never been split directly onto the floor.

The tenant further testified that the rental unit has not been assigned or sublet; the tenants have always lived in the rental unit. There have been periods where no one else lived with the tenants and times when someone did.

The tenants have looked after the home and made repairs at their cost. The One Month Notice to End Tenancy for Cause is not justified; the tenants haven't done anything that they are accused of. The landlord wants to rent to someone else for more money. On numerous occasions in talking with the landlord, he would mention that the tenants were getting a good deal and the landlord could get double in the rental market.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The tenants' reason for disputing the One Month Notice to End Tenancy for Cause is because they say they don't know why it was issued. However, building an additional room in the basement, more people in the house than there's supposed to be and some repairs have not been looked after, such as fascia boards, a cracked basement floor, fence, lawn, and have sublet. There have been no written notices asking the landlord to make any repairs.

SUBMISSIONS OF THE TENANTS:

None of the reasons in the Notice apply to the tenants. The house is in better condition since the tenants moved in, who have made lots of repairs at their cost. The tenants have not done anything they've been accused of.

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. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form. The reasons for issuing it are in dispute.

The *Act* contains certain reasons that a landlord may end a tenancy, and those reasons are in the approved form. There is no provision in the *Act* or in the form of the Notice permitting the landlord to invent reasons, such as, “Disgruntled with neighbour,” or “disgruntled with landlord.” Only the reasons that have checkmarks in the boxes on page 2 of the Notice are reasons for ending the tenancy.

With respect to the first reason, unreasonable number of occupants, there is no evidence from the landlord to establish what a reasonable number of occupants might be. The tenant testified that the rental unit has 5 bedrooms and 5 bathrooms, and the tenants are a family of 4. The tenant also testified that the landlord was notified that the friend would be staying there, and was there for a year ending in August, 2020. An uncle also lived there until March 8, 2022 but moved in on February 15, 2021. If there was an unreasonable number of occupants, the landlord ought to have done something about that a year ago. I am not satisfied in the evidence that there have been an unreasonable number of occupants.

With respect to extraordinary damage, the parties gave evidence of repairs required, but I don't see any of the items to be extraordinary damage, or that the tenants have not done required repairs. There is no move-in condition inspection report showing that any of the items were not already damaged at move-in.

There is no evidence that the tenants have assigned or sublet. The tenant testified that no rent was collected, and I accept the undisputed testimony of the tenant that the tenants have resided in the rental unit throughout the tenancy. A sublet means that the tenants have moved out.

The landlord's agent testified that the real reason for ending the tenancy is due to issues with the landlord and neighbours, however that is not one of the reasons permitted by law to end a tenancy.

The One Month Notice to End Tenancy for Cause dated March 28, 2022 is hereby cancelled and the tenancy continues.

Since the tenants have been successful with the application the tenants are entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated March 28, 2022 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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: July 05, 2022

Residential Tenancy Branch