

Residential Tenancy Branch
400-5021 Kingsway
Burnaby, BC V5H 4A5

Copied:



October 6, 2020

Submissions on behalf of [REDACTED], Tenant & Applicant.

File #: [REDACTED] – Hearing scheduled for [REDACTED]

Remedies sought:

- The Tenant seeks an order cancelling the Landlord's One Month Notice to End Tenancy for Cause or Unemployment.
- The Tenant further seeks and order for the Landlord to pay the Tenant's filing fee of \$100.00.

Service of Documents:

1. On or about August 31, 2020, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause or Unemployment (the "**Eviction Notice**") by leaving a copy in the Tenant's mailbox or mail slot, and by attaching a copy to the door of the Tenant's rental property.

*See Tab A of the Tenant's Evidence Package for
a copy of the Eviction Notice*

2. On or about September 1, 2020, the Tenant became aware of the Eviction Notice.
3. On or about September 8, 2020, the Tenant filed an application for dispute resolution challenging the Eviction Notice.
4. On or about September 15, 2020, the Tenant received the Residential Tenancy Branch's Notice of Dispute Resolution Proceeding package (the "**Dispute Notice**") to serve on the Landlord.

*See Tab B of the Tenant's Evidence Package for
a copy of the Dispute Notice*

5. On or about September 18, 2020, the Tenant served the Landlord with the Dispute Notice by sending a copy of the Dispute Notice, Respondent Instructions, and the Residential Tenancies Fact Sheet to the Landlord by Registered Mail, tracking number “ [REDACTED] ”.

See Tab C of the Tenant’s Evidence Package for a copy of the customer receipt, tracking confirmation, and confirmation receipt

6. On or about September 23, 2020, the Tenant’s registered mail package was delivered to the Landlord.

See Tab C of the Tenant’s Evidence Package for a copy of the customer receipt, tracking confirmation, and confirmation receipt

7. On or about October 6, 2020, the Tenant forwarded a copy of the evidence package to the Landlord by Registered Mail, tracking number “ [REDACTED] ”.

Preliminary Matters:

8. The Eviction Notice was both left in the Tenant’s mailbox or mail slot, and also attached to the front door of the rental property on August 31, 2020.

See Tab A of the Tenant’s Evidence Package for a copy of the Eviction Notice

9. The date on which the Tenant was requested to move out in the Eviction Notice was September 30, 2020.

10. Section 47(2) of the *Residential Tenancy Act*, SBC 2002, C78 (the “**Act**”) states that a notice under section 47 must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

11. Section 80 of the Act stipulates the manner in which all documents, including a notice to end tenancy for cause (which does not fall within one of the identified exceptions identified in section 89), have to be served on a person.

12. Pursuant to section 90(c) and (d) of the Act, a document attached to a door or other place, or served by leaving a copy of the documents in a mailbox or mail slot is deemed to have been received on the 3rd day after it is attached.

13. As the Eviction Notice was deemed to be served on September 3, 2020, but the effective date of the notice was listed as September 30, 2020, the effective date was incorrect.

14. Pursuant to section 53(1) of the Act, the incorrect effective date therefore automatically changes from September 30, 2020 to October 31, 2020, instead.

Facts:

Background

15. On or about October 1, 2014, the Landlord and Tenant entered into a residential tenancy agreement (the “**Agreement**”) for rental premises located at [REDACTED] in West Vancouver, British Columbia (the “**Rental Property**”). The Agreement contemplated a fixed-term tenancy of one year, with the tenancy continuing on month-to-month basis after September 30, 2015. It should be noted that the Landlord did not provide the tenant with a copy of the Agreement and the Tenant only has an unsigned copy of the Agreement.

See Tab E of the Tenant’s Evidence Package for a copy of the Agreement

16. The Rental Property consists of a two-level house containing 5 bedrooms and 3 bathrooms.

See Tab F of the Tenant’s Evidence for pictures of the Rental Property

17. Between October 1, 2014 and the date of the hearing, the Landlord increased the rent a number of times. [REDACTED].

18. The Landlord and Tenant additionally did not perform a move-in inspection and subsequently the Landlord did not complete a condition inspection report with the Tenant at the beginning of the tenancy, nor at any point during the tenancy. As a result, the parties do not have a condition inspection report as required pursuant to section 23(4) of the Act, nor any other report permitted under section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 (the “**Regulations**”).

19. Prior to the COVID-19 pandemic, the Landlord listed the Rental Property for sale. As the listing was removed prior to the date of the Eviction Notice, the Tenant is unable to provide the listing as part of the evidence for the hearing.

20. In or around the end of July 2020, the Landlord again listed the Rental Property for sale. The images at Tab F are the pictures taken by a professional photographer of the Rental Property.

See Tab G of the Tenant’s Evidence for pictures of the MLS Listing for the Rental Property

21. During both the previous and the new listing of the Rental Property, the Landlord has shown the Rental Property to numerous prospective buyers, and the Tenant has accommodated such viewings by providing generous access to the Rental Property.

See Tab H of the Tenant’s Evidence for text messages from the Landlord requesting access to the Rental Property

22. From the date of the Agreement to the date of this hearing, the Landlord has performed numerous inspections of the Rental Property, at a rate of nearly once every three months. The Tenant has accommodated the inspections in accordance with the Act. Additionally, from January 2020

onward the Landlord and his agents have shown the Rental Property to potential buyers. The Tenant will provide oral evidence about this fact as part of the hearing.

Unreasonable Number of Occupants in Suite

23. The Landlord alleges that the Tenant has allowed an unreasonable number of occupants in the Rental Property.
24. The Rental Property is a five-bedroom, three-bathroom single family home that is spread out over two stories.

See Tab I of the Tenant's Evidence for text messages between the parties respecting roommates

25. From the beginning of the tenancy in 2014, the Tenant has routinely rented out rooms in the Rental Property to his employees, with each employee having occupancy of their own room. The Tenant will provide additional oral evidence to that effect.
26. Additionally, the Landlord has been aware from the beginning of the tenancy that the Tenant was renting out the rooms in the Rental Property to roommates, as the Landlord routinely inspected the home from 2014 onward.
27. Including the Tenant, whose name appears on the Agreement, there are a total of five (5) people currently residing at the Rental Property: [REDACTED] (the Tenant's partner); [REDACTED], [REDACTED], and [REDACTED].
28. This fact was also communicated between the Landlord and the Tenant via text message on several occasions. For example, on February 6, 2020, the Landlord wrote in a text message to the Tenant requesting that he "kindly ask [his] roommates to make the home as clean and tidy as they can".

See page 59 at Tab I of the Tenant's Evidence for text messages between the parties respecting roommates

29. Again, on February 27, 2020, the Landlord asked the Tenant to "Please tell the guys that the suite must be presentable for open house. Take a look at these pictures. This is unacceptable and not helping with sales. If they do not want to help then they must move out. Thanks"

See page 62 at Tab I of the Tenant's Evidence for text messages between the parties respecting roommates

30. Another example is the text message on June 17, 2020, where the Tenant advised the Landlord that "nobody here thinks having people walk through the house is ok", in response to a request for a showing of the Rental Property to prospective buyers. Additionally, there is another text message where the Tenant informs the Landlord that his "roommates will most likely be home", further demonstrating that the Landlord was aware of the Tenant's roommates.

See pages 60 and 61 at Tab I of the Tenant's Evidence for text messages between the parties respecting roommates

31. At no point did the Tenant conceal that he had roommates or that the house did not have more people than the Rental Property had capacity for and puts the Landlord to strict proof thereof. The Tenant will further provide additional oral evidence, if necessary.

*Tenant Put the Landlord's Property at Significant Risk &
Tenant has caused extraordinary damage to the Unit or Property*

32. The Landlord alleges that the Tenant has tampered with electrical wiring and plumbing system of the premises to build new kitchen and laundry space without the approval of homeowner. The Tenant expressly denies this allegation.
33. The Landlord further alleges that the Tenant has removed a wall, added a wall, created of rooms within the premise for purpose of renting out to others without approval or the consent of the homeowner. The Tenant also expressly denies this allegation.
34. From the date of the Agreement to the date of this hearing, the Rental Property suffered a number of issues affecting the state of the Rental Property that the Tenant had brought to the Landlord's attention, but the Landlord either did not take action promptly or at all, in some cases requesting that the Tenant repair same. These include a leaking roof that the Tenant informed the Landlord of as late January / early February 2020.

*See Tab J of the Tenant's Evidence for
text messages between the parties respecting leaks in the roof*

35. When the Tenant first moved into the Rental Property, the basement was unfinished and did not have an insulated ceiling, and further did not contain a kitchen, although the space already had the necessary plumbing and electrical outlets required to accommodate the installation of kitchen cabinets. The Tenant will provide further oral evidence on this point.
36. The Tenant will also provide oral evidence about the discussions the Landlord and the Tenant had where the Landlord advised that if the Tenant would install a kitchen in the basement of the Rental Property at his own cost, that the Landlord would allow it and not raise rent and alternatively, if the Landlord installed the kitchen cabinets, then he would increase the rent.
37. Shortly before July 28, 2020, the Landlord requested a list of the improvements that the Tenant had made to the Rental Property, via WhatsApp message, likely in order to re-advertise the Rental Property for a potential sale. The Landlord followed up on his message on August 12, 2020.

*See page 84 at Tab K of the Tenant's Evidence for
text messages between the parties respecting the Tenant's list of improvements*

38. On or about August 21, 2020, the Tenant provided the Landlord with the list of improvements he had made to the Rental Property from 2014 to date, along with the approximate cost the Tenant incurred in doing so. These are as follows:

- a. supply materials and install a cedar patio/deck in the back of the Rental Property, installed in 2018 - \$600.00;

See page 85 in Tab K of the Tenant's Evidence

- b. supply and install a carport-style cover to one side of the Rental Property, installed in 2018 - \$400.00;

See page 86 in Tab K of the Tenant's Evidence

- c. supply and install a roof/cover to the other side of the Rental Property, installed in 2018 - \$100.00;

See page 87 in Tab K of the Tenant's Evidence

- d. supply and install a washer and dryer in the solarium of the Rental Property in 2018 - \$800.00;

See page 88 in Tab K of the Tenant's Evidence

- e. supply and install a bathroom vanity, mirror, and shelving in the master bedroom ensuite in 2016 - \$600.00;

See page 89 in Tab K of the Tenant's Evidence

- f. supply and install five light fixtures and lights throughout the property in 2016 - \$250.00;

See page 90 in Tab K of the Tenant's Evidence

- g. supply and install a refrigerator in the Rental Property in 2016 - \$150.00;

See page 91 in Tab K of the Tenant's Evidence

- h. supply and install a new and larger hot water tank for the Rental Property in 2017 - \$300.00;

See page 92 in Tab K of the Tenant's Evidence

- i. update the fireplace, supply and install pointed tiles and a frame for the fireplace in 2016 - \$100.00;

See page 93 in Tab K of the Tenant's Evidence

- j. supply and install kitchen cabinets and appliances to the basement suite in 2016 - \$1,500.00;

See page 94 in Tab K of the Tenant's Evidence

k. supply and install carpets for the basement suite in 2016 - \$1,500.00;

See page 95 in Tab K of the Tenant's Evidence

l. supply and install carpet vanity for another bathroom in 2016;

See page 96 in Tab K of the Tenant's Evidence

m. insulate and repair the ceiling of the kitchen and living room in the basement in 2016 - \$800.00;

See page 97 in Tab K of the Tenant's Evidence

n. supply and install doorknobs throughout the Rental Property in 2016 - \$450.00;

See page 98 in Tab K of the Tenant's Evidence

o. remove a dog door and resurface the door to the basement in 2016 - \$100.00; and,

See page 99 in Tab K of the Tenant's Evidence

p. various minor improvements throughout the house.

(the “**Improvements**”)

39. In total, the Tenant spent 300 hours in installing the improvements (at a cost of approx. \$15,000.00), in addition to supplying \$8,950.00 in materials. The Tenant at no point requested any reimbursement of these expenses from the Landlord.

See page 100 in Tab K of the Tenant's Evidence

40. On or about August 30, 2020, the Landlord informed the Tenant - for the first time - that the work performed by the Tenant was unauthorized and that as a result, the Tenant would be served with a notice to end tenancy.

See pages 102 - 105 in Tab K of the Tenant's Evidence

Tenant has assigned or sublet the rental unit without the landlord's written consent.

41. Lastly, the Landlord is alleging that the Tenant has assigned or sublet the rental unit without the Landlord's written consent. The Tenant explicitly denies that allegation.

42. The Tenant will provide oral evidence about the arrangement he has with his roommates, and that no part of the Rental Property has been assigned or sublet to anyone. The Tenant puts the Landlord to strict proof thereof.

Legal Basis

43. The Landlord has issued the Eviction Notice presumably pursuant to section 47(1)(c), (d)(iii), (f), and (i) of the Act.

Residential Tenancy Act, section 47(1)

44. Although it is the Tenant that has brought the present application for dispute resolution with the Residential Tenancy Branch and ordinarily has the onus of proving their case, pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, when a tenant applies to cancel a Notice to End Tenancy, the onus is reversed and the landlord must prove the reason they wish to end the tenancy.

Residential Tenancy Branch Rules of Procedure, Rule 6.6

45. In any event, the Tenant has provided the law that applies to the claims brought by the Landlord, as well as their submissions regarding same, below.

Putting the Landlord's Property at Significant Risk / Extraordinary Damage

46. The Landlord alleges that the Tenant has put the Landlord's Rental Property at significant risk and additionally has caused extraordinary damage to the Rental Property. The Tenant again denies this allegation in its entirety.
47. In support of these allegations, the Landlord has stated that the Tenant has removed a wall structure, added a wall and created a room within the Rental Property, tampered with electrical wiring and plumbing systems of the premise to build a new kitchen and laundry space without the approval of the home owner.
48. With respect to the allegation that the Tenant has caused extraordinary damage to the Rental Property, that allegation is simply not supported by anything. If the Tenant had indeed caused extraordinary damage to the Rental Property, the Landlord would not be constantly showing the Rental Property to prospective buyers on a near weekly basis and would have instead issued the Eviction Notice before the first listing of the Rental Property.
49. In fact, it is the Tenant's respectful submission that the Tenant has significantly improved the Rental Property since the beginning of the tenancy, by installing and improving on various items in the house that are ordinarily the Landlord's responsibility, including replacing the hot water tank, finishing the basement by installing insulation and dry-walling the ceiling, finishing the basement kitchen by installing cabinets and a fridge, replacing the carpets in the living room, improving the fireplace, and installing various fixtures such as lights and doorknobs.
50. In the listing, the Landlord has advertised the Rental Property's basement as being a "fully finished basement suite"

See page 38 in Tab G of the Tenant's Evidence

51. The extraordinary damage that does exist is the result of the Landlord's neglect, specifically in relation to repairing leaks in the roof of the Rental Property that have plagued the Tenant for months.

52. Residential Tenancy Policy Guideline 1 explains the Landlord's and the Tenant's responsibility for residential premises, specifically as they relate to renovations and changes made to the rental unit. It states at page 1-2 that:

Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Residential Tenancy Policy Guideline 1, page 1-2

53. It is the Tenant's respectful submission that if the Tenant's improvements are found to amount to "extraordinary damage", which the Tenant denies, that the Tenant be provided with the opportunity to put the property back in the state it was in at the beginning of the tenancy, which would include removing all of the improvements made to the Rental Unit.
54. The Tenant therefore respectfully submits that the Eviction Notice be cancelled as the Tenant did not cause any kind of damage to the Rental Property.
55. In terms of the Tenant putting the Landlord's property at significant risk, the Tenant also denies this allegation. While the Landlord alleges that the Tenant has tampered with electrical wiring and plumbing systems, that is incorrect. It is the Tenant's submission that the Tenant did not perform any work that required any permits or specialized expertise to perform.
56. In building a new kitchen, the Tenant merely hung cabinet and installed appliances to the hook-ups that were already available in the basement of the Rental Property. This was also done with the express permission of the Landlord.
57. With respect to the laundry space, the landlord was aware of the installation at least as early as 2018, when the appliances were first installed.
58. It is the Tenant's respectful submission that by serving the Tenant with the Eviction Notice after several years of knowing about the state of the Rental Property, the Landlord is harboring an ulterior motive that is related to the sale of the Rental Property, which amounts to bad faith.
59. The Tenant therefore request that the tribunal cancel the Landlord's Eviction Notice on these ground, as well.

Unreasonable Number of Occupants in the Unit / Assignment and Sublet

60. The Landlord alleges that the Tenant is maintaining an unreasonable number of occupants in the Rental Property and that the Tenant has also either assigned or sublet the Rental Property to subtenants.
61. Section 34 of the Act stipulates that unless a landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
62. Residential Tenancy Policy Guideline 19 defines the term ‘assignment’ as the “act of permanently transferring a tenant’s rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.”

Residential Tenancy Policy Guideline 19 at p. 2

63. Similarly, the same policy guideline defines the term “sublet” as follows: “When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement.”

Residential Tenancy Policy Guideline 19 at p. 4

64. Policy guideline 19 goes on to explain at pages 5 and 6 that:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

...

‘Sublet’ has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.

...

When determining whether a One Month Notice to End Tenancy (form RTB-33) for cause was issued properly, the arbitrator will examine a number of factors, including the terms of the tenancy agreement between the original landlord and the tenant, whether the agreement contains terms restricting the number of occupants or the ability of the tenant to have roommates and the intent of the parties.

Residential Tenancy Policy Guideline 19 at p. 4

65. It is the Tenant’s respectful submission that the Tenant neither assigned nor sublet the Rental Property to anyone, as the Tenant still resides in the unit himself and has not entered into any sublease agreement.
66. With respect to the term in the Agreement whereby the Tenant “understands that no other person except names mentioned above could occupy the building”, the intention of the parties was for

the Tenant to have roommates and this term was implicitly waived by the Landlord from the beginning of the tenancy in 2014, when the Tenant obtained the verbal permission from the Landlord to rent the additional rooms out to roommates. The evidence demonstrates that the Landlord was aware of the Tenant's roommates and did not object to their presence, until the Landlord was looking to sell the Rental Property.

67. In terms of the number of occupants residing in the unit, the Landlord at no point raised any concern with the Tenant about the number of occupants living in the Rental Property.

68. Additionally, the Agreement is silent on a maximum number of occupants allowed in the Rental Property.

69. Policy Guideline 19 states at pages 7-8 that:

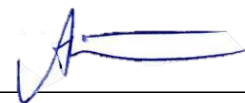
While terms restricting the number of occupants or requiring prior consent of the landlord for additional occupants are not standard terms of a tenancy agreement under the Act, the parties may include such clauses and may also set out in their written tenancy agreement that the amount of rent increases for additional occupants, in accordance with s. 13 (2)(iv) and s. 40 of the Act.

Residential Tenancy Policy Guideline 19 at p. 7 - 8

70. It is the Tenant's respectful submission that by serving the Tenant with the Eviction Notice after several years of knowing about the state of the Rental Property, the Landlord is harboring an ulterior motive that is related to the sale of the Rental Property, which amounts to bad faith.

71. The Tenant therefore request that the tribunal cancel the Landlord's Eviction Notice on these grounds, as well.

All of which is respectfully submitted this 6th day of October, 2020.



Arash Ehteshami
Counsel for the Tenant