



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 407417 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 31, 2014 ("1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's three agents, KC, JR and DL (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant's support advocate and the tenant's wife/occupant of the rental unit attended the hearing but did not provide any testimony.

The landlord's agent and property manager, KC, ("KC") gave sworn testimony that a 1 Month Notice, with an effective move-out date of November 30, 2014, was personally served on the tenant's wife at the rental unit, on October 31, 2014. Section 88(e) of the *Act* permits personal service of the 1 Month Notice at the tenant's residence, to an adult who apparently resides with the tenant. The tenant confirmed that his wife is an occupant of the rental unit and confirmed receipt of the 1 Month Notice on that date in that method. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 1 Month Notice on October 31, 2014.

The tenant testified that he served the landlord with the Application for Dispute Resolution hearing package ("Application") on November 10, 2014 by registered mail. He provided a tracking number orally during the hearing. The Canada Post website confirms that the package was mailed out on November 10, 2014, that delivery was attempted on November 12, 2014, that the item was available on November 12, 2014 for pick-up and a final notice for pick-up was sent to the recipient on November 17, 2014. According to the Canada Post website, the package was picked up by the landlord on November 21, 2014, with a digital image of the landlord's signature obtained. KC testified that he picked up the tenant's Application on November 21, 2014, as the mail is checked infrequently at the landlord's address for service. KC confirmed that the address for service is the correct mailing address of the landlord. KC testified that he accepts that the package was received on November 17, 2014, the date that is stamped on the

package itself. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the Application on November 15, 2014, the fifth day after its mailing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

KC testified that this tenancy began on June 1, 2013. He states that this tenancy is currently for a fixed term from June 1, 2014 to May 31, 2015. Monthly rent is payable in the current amount of \$850.00 due on the first day of each month. A security deposit of \$400.00 was paid by the tenant on June 1, 2013. The tenant occupies the rental unit with his wife and daughter. The tenant continues to reside in the rental unit with the above-mentioned occupants.

The tenant entered into written evidence a copy of the landlord's 1 Month Notice. In that notice, requiring the tenant to end this tenancy by November 30, 2010, the landlord cited the following reasons for the issuance of the notice:

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk; and*

Tenant has caused extraordinary damage to the unit/site or property/park.

In accordance with subsection 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on October 31, 2014. The tenant filed his application for dispute resolution on November 3, 2014. Accordingly, the tenant filed within the ten day limit under the *Act*.

KC stated that the landlord's property was placed at significant risk by the tenant and his occupant wife by maintaining improper heating and cooling practices inside the tenant's rental unit. He testified that the tenant and occupant were told by the landlord's maintenance worker and building manager on two occasions to keep the heating levels between 15 and 20 degrees Celsius in order to prevent mold growth and spreading. He testified that the rental unit is kept very cool, with the heat turned off at most times, against the landlord's recommendations. Sometimes the heat is turned very high in certain rooms, causing improper temperature balance. He stated that these improper practices caused the growth and recurrence of mold and improper condensation levels. He noted that ongoing moisture rots gyproc in the building.

The tenant provided a chronology of the events surrounding the mold issue, which he submitted as evidence with his Application. He stated that he alerted the landlord's agent and

maintenance worker, DL ("DL") in August 2013 regarding mold around the windows and on the ceiling corner of the master bedroom in his rental unit. He said that DL cleaned the mold with a spray at this time. DL testified that he was first notified of the mold problem inside the tenant's rental unit in 2013. DL stated that he cleaned the mold in the rental unit with a spray, but that it was done in fall 2013, not August 2013. He could not recall the date, but stated that it was implausible that he was advised about mold in August 2013, as it is hot during summer and mold cannot grow in warmer temperatures. KC testified that he sometimes uses his heater in August 2013, as the weather can be cooler in the area during that time. DL further stated that the mold was not on the ceiling but near the beds because the tenant's mattresses were up against the wall.

The tenant stated that the mold issue arose again in December 2013, around his windows, ceiling and a new spot in the bathroom along the wall of the tub. He advised DL once again, who sprayed the areas with a mold spray. The mold in the bathroom was cleared but the other areas of mold resurfaced later, after which the tenant's wife cleaned those areas. The tenant advised DL that he thought water was leaking through the vent above the stove, but DL told him that it was due to humidity and there was nothing he could do about it. DL testified that this conversation occurred sometime in 2014, not December 2013, but he could not recall the exact date. The tenant stated that DL advised him that he would send a contractor to check the insulation in the roof and follow up with the tenant, but he did not follow up later. DL stated that he had the roof checked sometime in 2014, not December 2013, but there were no issues with the roof, so he did not follow up with the tenant. KC stated that the landlord had a new roof at the rental building.

In September 2014, the tenant stated that he again contacted DL regarding mold in the bedroom clothes closet, on the ceiling and around the windows of both the master and second bedroom. No mold was cleaned by DL at this time. The tenant raised the issue of the leak above the stove again. As per the tenant's evidence, DL and the landlord's agent and building manager, JR ("JR"), immediately checked the roof again, stating that they could not find any leaks. JR told the tenant that he would be relocated to the first available mold-free two-bedroom apartment in one of the owner's 9 buildings. KC confirmed this offer, but stated that he revised JR's position and stated that he was not willing to relocate the tenant, if he had caused the mold problem. Approximately two days after the above meeting with JR, the tenant was advised for the first time about temperature control by JR, as per the tenant's evidence.

DL stated that he told the tenant's wife to keep the temperature inside the rental unit between 15 and 20 degrees Celsius when the mold issue was first reported in 2013. The tenant testified that he was only advised about maintaining temperature control in September 2014, not any time in 2013. He stated that once he was advised of this, the temperature in the rental unit was kept at 20 degrees Celsius in all rooms from that date forward. KC testified that once the tenant was served with the 1 Month Notice, he increased the heat significantly at that time, rather than earlier when first advised to do so.

Between October 20 and 23, 2014, the tenant went out of town with his family and turned down the apartment temperature. The tenant testified that he advised JR that he would be out of town and JR did not advise him that he needed access to the rental unit during this time. The tenant stated that he did not give permission for JR to enter his rental unit while he was out of town, particularly given that he had confidential client files kept there. JR testified that he advised the tenant that he required access to the rental unit while he was away, in order to change the temperature and determine if there were any differences. The landlord admitted that no written notice was provided because access to the rental unit was given verbally for the time while the tenant would be out of town. JR stated that he accessed the rental unit on October 21, 22 and 23 for a total of four times. JR stated that there was condensation buildup in the rental unit from humidity on October 21, 2014. He noticed the heat was turned off when he entered and he set the heat to 20 degrees Celsius when he left the unit.

JR spoke to the tenant on October 24, 2014, that one room was very hot, while the other two rooms had the heat turned off. He stated that the heat regulation had to be the same in all rooms of the rental unit. The tenant said that when he returned from his trip, JR showed him photographs of his rental unit windows without fog, explaining that the heat had been turned up and solved the fog problem. These pictures were not provided by the landlord at this hearing. This is when the tenant determined that JR had entered his rental unit without his permission. JR mentioned temperature control to the tenant at this time and the tenant stated that he complied with the request.

A few days after October 24, 2014, JR and DL asked the tenant's wife for access to the rental unit and noticed a wall of humidity when they entered. The tenant stated that JR and DL were given permission to enter the rental unit on October 31, 2014, while his wife was alone at home, and did not speak English properly as it is her second language. The landlord contests that the wife does not speak English properly. JR and DL again noticed condensation buildup but did not check the heat gauges at this time but noticed that one register was hot and the other two were cold, to the touch. JR and DL stated that there was no mold at this time. Both took pictures at this time, as per the tenant's evidence, but none were provided to me at this hearing. The tenant stated that the 1 Month Notice was given to the tenant's wife during this visit, while JR was gesturing towards the fog on the windows, as the reason for seeking the eviction.

The tenant stated that there is no connection between temperature control and any extraordinary damage to the rental unit. He further stated that the landlord has not advised him of any required repairs for mold or gyproc, in his rental unit.

KC testified that there is a moisture problem in other rental units in the building, but not to the same degree as the tenant's rental unit. The tenant testified that there are other apartments in the building who have varying degrees of moisture on their windows, which are clearly visible. KC stated that no other mold problems have been reported by other tenants in the building in the last year, although he admitted that he relied on tenants to report these issues. He further

stated that the tenant's rental unit had no water leak causing the mold, as he is on the top floor of the building, where there is no plumbing above.

The tenant provided a picture of the master bedroom of the rental unit as of November 9, 2014, where the mold was cleaned. He also provided a video of the foggy exterior windows of the rental unit, which shows no condensation in the inside of the rental unit, but some water buildup outside of the rental unit window. The tenant stated that there is no mold currently in the rental unit and there has not been any since October 2014.

At the end of the hearing, KC made an oral request for an order of possession against the tenant.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, videos and miscellaneous letters, and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not provide any documentary evidence for this hearing.

KC stated that he is unaware as to whether there is a mold problem right now, as there may not be one at this time. The tenant provided pictures and video of his rental unit and testified that there is no mold in his rental unit, currently. However, KC stated that the rental unit and building are at significant risk of future damage, as mold is spreading, gyproc may need to be replaced, and mold may need to be cut out from the rental unit. KC testified that a future problem may occur, if the current heating/cooling regulation practices of the tenant and occupant continue. Yet, the landlord has not had any repairs completed in the rental unit, despite having DL attend at the unit multiple times, only to clean mold with cleaning products. KC stated that the wood inside the rental building was damaged and he had pictures of such evidence, but he did not provide them for this hearing. The landlord has not provided any pictures or video of any potential mold damage. The landlord is concerned about a future problem occurring.

The landlord did not provide any documentary evidence of any significant risk to the landlord's property. The landlord did not provide evidence that residents of the property were required to vacate their units for any reason, including to repair any mold issues. There are no documented assessments completed by contractors or experts to document the existence of any mold in the rental unit or at the property. No effort has been made by the landlord to assess the extent of any potential mold damage, repairs to be done, whether other units may be affected or whether a significant risk exists for the building or other rental units. There are moisture problems in

other units in the building. As there have been no complaints of mold in other rental units in this 263-unit building, there is no evidence that the mold is spreading around the building. The landlord has not attempted to even enter the rental unit for over 23 days, from the date that the notice was served on the tenant's wife on October 31, 2014, to the date of this hearing on November 24, 2014, in order to assess whether the mold situation has worsened or put the landlord's property or its residents at any risk. No action has been taken by the landlord in order to rectify this dire situation, where the landlord claims that the tenant and occupant of the rental unit have put the landlord's property at significant risk.

During the hearing, KC testified that he was withdrawing the landlord's claim that this tenancy should end because the tenant or a person permitted on the property by the tenant, has caused extraordinary damage. He testified that he cannot state that the tenant or occupant have actually caused extraordinary damage. In any event, the landlord has not met his burden to show that extraordinary damage was caused by the tenant or another occupant. As above, he has not provided any documentary evidence of any damage to the rental unit or rental property, including pictures, estimates or receipts for repairs.

For the reasons outlined above, I am not satisfied that the landlord has met its onus, on a balance of probabilities, to end this tenancy based on the reasons cited in Sections 47(1)(d)(iii) or (f) of the *Act*. The landlord has not shown that the tenant or occupant put the landlord's property at significant risk or caused extraordinary damage to the rental unit or property.

Accordingly, I allow the tenant's Application to cancel the landlord's 1 Month Notice and I deny an Order of Possession in this instance. The landlord's 1 Month Notice is cancelled and is of no force or effect. This tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in this Application, he is entitled to recover the filing fee of \$50.00 paid for this Application, from the landlord.

Conclusion

I allow the tenant's Application to cancel the 1 Month Notice and I deny an Order of Possession in this instance.

The 1 Month Notice, dated October 31, 2014, is cancelled and is of no force or effect. This tenancy continues.

I order that the tenant is entitled to deduct \$50.00 from his future rent at the rental unit, to recover the filing fee for this Application from the landlord. This is in accordance with the offsetting provisions of Section 72(2)(a) of 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: December 2, 2014

Residential Tenancy Branch

