Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC, RP, AS, FFT

Introduction

This hearing dealt with applications from the two individuals identified above as Applicants pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order allowing the applicants to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another with respect to the portion of this application that I was able to hear during this hearing which took over one hour to conduct. At the outset of this hearing, I noted that it was unlikely that there would be time to address all of the issues identified in this application for dispute resolution. I noted that the Residential Tenancy Branch's (the RTB's) Rules of Procedure enable me to focus on the issues that needed the most urgent attention and to dismiss with leave to reapply issues that could not be considered during the time available and appeared to be unrelated to the central issue, which was whether the tenancy should end on the basis of the landlord's 1 Month Notice. In exercising this discretion pursuant to Rule 2.3 of the RTB's Rules of Procedure, I consider that the application for a monetary award of $23,773.06 is unrelated to whether the 1 Month Notice should be cancelled. I also note that a number

of the other outcomes sought by the applicants were dependent on whether this tenancy were to continue. My decision has focussed on the application to cancel the 1 Month Notice and to obtain the recovery of the filing fee for this application from the landlord. All other portions of the application for dispute resolution are dismissed with leave to reapply.

Although Applicant DG identified herself as a tenant in this application for dispute resolution, the only tenant who signed the Residential Tenancy Agreement (the Agreement) with the landlord on February 25, 2016 was Tenant DML (the tenant). I also note that the only person identified as a tenant on the landlord's 1 Month Notice was the tenant. As DG did file this application jointly with the tenant, I advised the parties that I would allow her to remain in attendance during the course of this hearing, despite the fact she is an occupant and not a tenant, as defined under the *Act*. At the commencement of the hearing, the tenant advised that there were additional occupants who were interested in participating in this hearing. I asked that these occupants leave the room where the tenant and Applicant DG were participating in this teleconference hearing, so as to enable them to be called as witnesses if the need arose. As the participation of these occupants as witnesses was not required to provide a proper understanding of the application to cancel the landlord's 1 Month Notice, these occupants did not provide any testimony at this hearing.

As the tenant confirmed that he received the landlord's 1 Month Notice on December 31, 2017, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that she received a copy of the dispute resolution hearing package sent by the applicants by registered mail on or about January 8, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had served one another and received from one another their written evidence, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? In the event that this tenancy were to continue, should any other orders be issued with respect to this tenancy? Are the applicants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord did not dispute the tenant's assertion that he commenced residing in this 5-bedroom house approximately one year before he signed the written Residential Tenancy Agreement (the Agreement) as the tenant on February 25, 2016. Prior to that time, he was an occupant of this house, living in one of the bedrooms. During that period, rent was paid to another individual who was then the landlord's tenant, who in turn paid rent for the entire home to the landlord. The tenant was the only tenant listed on the Agreement. Monthly rent was set at $2,950.00 for this month-to-month tenancy that was to commence on March 1, 2016, payable in advance on the first of each month. The parties agreed that the current monthly rent is $3,059.15. This amount is scheduled to increase to $3,181.00 as of March 1, 2018, should this tenancy continue. Both parties confirmed that monthly rent is current for this tenancy, and another monthly rent payment does not become due until March 1, 2018.

Although the Agreement was on a standard RTB form (Form #RTB-1) prepared for use by landlords and tenants, the landlord included the following handwritten special term in the Additional Information section of this Agreement:

> "*Repair any has to be tenant responsibility"*

At the hearing, I advised the parties that this type of provision in the Agreement has no legal effect. This is an unconscionable term that cannot be included in a tenancy agreement and thus in contravention of section 6(3)(b) of the *Act*. Section 5 of the *Act* also prevents such provisions from having any legal standing as parties cannot contract outside of the *Act*. Separate from these problems with this item in the Agreement, it is clearly at odds with section 10 of this same Agreement, which outlines the rights and responsibilities of landlords and tenants with respect to repairs.

The tenant gave sworn testimony supported by a written statement by another individual that "the court", (actually from the description, an arbitrator appointed pursuant to the *Act*), "ordered" the landlord to create individual tenancy agreements for everyone who was living in this rental home in a previous dispute resolution hearing. The tenant maintained that the landlord ignored this clear direction and proceeded to sign only the one Agreement with him, requiring him to collect rent from others in the house and forward it to her as part of his monthly rent payment. As I could find no copy of any previous decision of an arbitrator appointed under the *Act* in the tenant's written evidence submission, I asked the tenant if he had any more details regarding this part of the application for dispute resolution. The tenant testified that he did not know the file number for this decision, nor did he have a copy of it, nor any other details other than the knowledge that this had occurred, as conveyed to him by someone else.

Applicant DG observed that information regarding the previous decision involving the previous tenancy was information that the RTB would clearly. Applicant DG maintained that it was the RTB's responsibility to locate this decision and consider it as part of this application for dispute resolution. In this regard, I noted that I cannot consider documents that are not provided as part of the parties' written evidence packages or their sworn testimony. To do so would be to deny the other party of a fundamental right to know the case against them and, hence, would contravene the rules of natural justice. It is the responsibility of the parties to present whatever they would like an arbitrator to consider as part of their written evidence package. In the event that portions of an application are dismissed with leave to reapply, as is the case with respect to this hearing, the applicant must once more present a new and complete package of evidence to both the respondent and the RTB.

Although I have not considered the merits of the application for a monetary award of $23,773.06, I note that the items identified for reimbursement from the landlord in the application for dispute resolution were as follows:

Item	**Amount**
Vinyl Flooring	$421.57
Paint Supplies	88.68
Plumbing	262.87
Labour for Carpet Removal in 3 Bedrooms and Stairs (with receipts)	1,000.00
Labour and Flooring (without receipts)	2,000.00
Compensation of $2,000 per tenant in case of eviction (10 tenants @ $2,000 = $20,000.00)	20,000.00
Total of Above Items	**$23,773.12**

In addition, the application sought the recovery of the $100.00 filing fee from the landlord.

The parties entered into written evidence a copy of the 1 Month Notice, requiring the tenant and all occupants on the premises to end this tenancy by January 31, 2018, and vacate the rental unit. The 1 Month Notice identified the following reasons for the issuance of the Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

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

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has assigned or sublet the rental unit/site without landlord's written consent…

Although the matter before me is the application to cancel the 1 Month Notice, the burden of proof rests with the landlord who issued the 1 Month Notice. The landlord must demonstrate on a balance of probabilities that they had valid grounds to end the tenancy for cause on the basis of at least one of the reasons identified in that Notice.

In this case, the landlord testified that when she rented the premises to the tenant, she understood that he was only planning to have five people live there, one for each of the five bedrooms in this house. Although she realized that more people were living in this home in the past, she only expected that the tenant, Applicant DG, Applicant DG's son and girlfriend, and Applicant DG's daughter were living in this home. The landlord said that when she conducted a scheduled inspection of the rental home on December 28, 2017, to look into a roof leak that had been reported by the tenant, she discovered that there were nine occupants in total in the house and eight cats. She provided undisputed written evidence that occupants were now also living in the living room and the dining room. She maintained that the tenant had never sought her permission to sublet to these additional occupants and that the tenant had never sought permission to keep cats in the rental property.

At the hearing, the landlord maintained that she was surprised that so many people were living in the rental home when she inspected it in December 2017, and was unaware that so many cats were living there. I asked the landlord if she could remember when she had last inspected the premises. She provided conflicting testimony with respect to when she had last conducted an inspection of the rental home. She initially said that it had likely been two months before her December 28, 2017 inspection. After some reflection, she later stated that it had likely been four or five months since she had last been inside this home. She changed this sworn testimony yet again, when she estimated that it might have been five or six months since she had been inside the home. However, the landlord was consistent in her testimony that when she was last there, she was unaware that cats were being kept in the home. In the absence of any specific reference to authorization having been given

to keep cats in the rental home, she believed that the tenant and the occupants were prevented from keeping cats there.

With respect to this issue, the tenant gave undisputed sworn testimony that he had been trying to get the landlord to inspect the premises for a long time, to no avail. He testified that until the landlord visited the premises on December 28, 2017, she had not been in the rental home since early in this tenancy, since at least March 2016.

Subsequent to finding out that there were cats present in the home, the landlord then tried to obtain a pet damage deposit of $300.00 per cat from the tenant. The tenant advised the landlord that this amount far exceeded the legal amount she could charge as a pet damage deposit. At the hearing, she said she would likely allow one cat to be kept in the home, but not eight. No pet damage deposit has been paid for this tenancy.

The landlord gave undisputed sworn testimony that she had never given the tenant permission to remove carpets in the rental home and replace them with vinyl flooring. She said that there was nothing wrong with the existing carpets, and that she would have expected to have been given an opportunity to compare costs of replacement versus cleaning them, or to compare options as to what type of product would replace the carpets if they needed to be replaced. The landlord also gave undisputed sworn testimony that she had never been consulted by the tenant with a request that a large “cat door” hole be cut in one of the interior walls.

The tenant maintained that there was black mould in the bathroom. The tenant claimed that his December 27, 2017 text message to the landlord regarding a leak in the roof that he believed was causing the black mould on the ceiling tiles was not an emergency situation requiring the landlord’s husband to rush to the rental home without giving 24 hours written notice to the tenants. The tenant claimed that Applicant DG’s subsequent refusal to allow the landlord’s husband access to the rental home without a proper 24 hour notice did not jeopardize the health and safety of the home, nor put the home at significant risk.

The tenant and Applicant DG said that the landlord knew how many people were living in this home. The tenant maintained that the landlord had not raised any concerns about the number of people living in the rental unit until Applicant DG refused the landlord access to the rental unit in late December 2017. When that happened, the tenant asserted that the landlord and her husband became upset that they had not been allowed immediate access to the rental property without giving the 24 hour notice to the tenants. The tenant also entered into written evidence a copy of his October 3, 2015

email to the landlord, which listed nine people living in the rental unit at that time. The landlord testified that she knew that some of these people had been evicted and were not living there by the time this tenancy began in March 2016, and did not realize that so many people were living in the rental home until she discovered this in December 2017.

The tenant maintained that the landlord's inclusion of the provision requiring the tenant to become responsible for undertaking any repairs was agreed to under duress, and put him in a position whereby he had to conduct these repairs in order to abide by the terms of his Agreement. On this point, Applicant DG asserted that the carpets were in very poor condition when this tenancy began, because of the previous history of tenants having kept cats in the rental unit. She said that the removal of the carpets and replacement with vinyl flooring constituted repairs that the tenant was responsible for undertaking as part of the Agreement. The tenant confirmed that he had neither sought nor obtained written permission from the landlord to remove the carpets and replace them with vinyl flooring. He explained that he was under "doctor's orders" to remove the carpet because it was damaging his health. The tenant also confirmed that he had not obtained permission to cut a hole in one of the interior walls to create a cat door so as to give the cats' access to one of the rooms.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this claim and my findings around each are set out below.

The following portions of section 47(1) of the *Act* have a bearing on the 1 Month Notice issued by the landlord in this case:

> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> > *(c) there are an unreasonable number of occupants in a rental unit;*
> >
> > *(d) the tenant or a person permitted on the residential property by the tenant has…*
> >
> > > *(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
> > >
> > > *(iii) put the landlord's property at significant risk;…*

> *(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];…*

Despite the unconscionable term included in the Additional Information section of the Agreement, the remainder of that Agreement is standard wording from a form created by the RTB. This included Section 10, which properly describes the rights and responsibilities of landlords and tenants under the *Act*. I find that the application for dispute resolution is at odds with the tenant's assertion that he felt bound by the term of the Agreement in undertaking all repairs within the rental home at his expense. In this application, the tenant and Applicant DG have submitted a claim of over $3,700.00 in compensation for the work that the tenant undertook in this rental home since March 1, 2016. If the tenant truly believed that his signing of the Agreement committed him to bearing responsibility for all repairs in the rental home, this seems at odds with this significant request for compensation as well as his December 27, 2017 request that the landlord attend to the repair of a roof leak and removal of mould in the upstairs bathroom of this home. I find the tenant's interpretation of the Agreement has been selective, at best, given the standard wording of the remainder of the Agreement. The tenant's swift recognition that the landlord was contravening the *Act* in requesting a pet damage deposit that exceeded the amount allowed in the *Act* informs me that the tenant was well aware of the protections provided in the *Act* for tenants.

Even if I were to accept the tenant's claim that he felt bound by his commitment that made him responsible for all repairs in the rental home, which I do not accept, I find on a balance of probabilities that the type of work undertaken by the tenant went far beyond what any reasonable person would consider conducting "repairs" to the rental property. The magnitude of this work qualifies as renovations and not repairs. I find that there is undisputed evidence that the tenant has without any notice to the landlord removed her carpeting in at least three bedrooms and the stairwell, and replaced them with vinyl flooring of his own choosing. Despite the landlord's shifting testimony on this point, I find it more likely than not that the tenant was correct in asserting that the landlord had not been in this rental home since early in this tenancy. Given this evidence, her issuance of the 1 Month Notice appears to have occurred as soon as she realized the magnitude of the changes that had occurred to her home.

I find the claim that tenant's claim that he took action to replace the carpets under "doctor's orders" particularly irrelevant. Only the landlord could authorize such significant changes to her property. Upon her refusal, she could be required to

undertake these changes upon orders from an arbitrator appointed under the *Act*. The tenant's cutting of a hole in the wall to accommodate a cat door without any authorization from the landlord further reinforces my view that the tenant has displayed a patent disregard for the landlord's property. Given these significant changes to the rental home, none of which were authorized or even discussed with the landlord, I find that the landlord had sufficient grounds to issue a 1 Month Notice on the basis that the landlord's property had been put at significant risk and that the landlord's lawful rights and interest in the property had been seriously jeopardized by the tenant's actions. Continuing this tenancy would only enable the rental home being put at further significant risk.

Although the above finding is sufficient to end this tenancy, I have also considered the other two reasons cited in the landlord's 1 Month Notice.

I should first note that I have reservations about the extent to which the landlord truly believed that the tenant intended to limit the number of occupants in this rental unit to five people, the number of bedrooms in this house. It is also possible that if people are co-habiting it would not be unreasonable for two people to be sharing some bedrooms. However, the undisputed sworn testimony that there are now people using both the living room and the dining room as bedrooms, without the landlord's approval, leads me to conclude that the tenant has allowed an unreasonable number of people to reside there. I also note that in contrast to the landlord's claim that there are nine people living in this 5-bedroom house, the application for dispute resolution seeks a monetary award of $2,000.00 for each of the ten people that are apparently residing there.

I also note that section 9 of the Agreement specifically requires that the tenant obtain the landlord's authorization to sublet space to others. Although he has not sublet the entire home to others and continues to live there, this provision is intended to ensure that landlords are at least aware of who is living in their rental property and ensures that tenants do not sublet portions of the home to an unreasonable number of occupants as has occurred in this instance.

For these reasons, I find that the landlord has demonstrated that there were abundant grounds to end this tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice. I dismiss the application to cancel the 1 Month Notice.

Section 55(1) of the *Act* reads as follows:

55 *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I find that the landlord's 1 Month Notice complies with the provisions as to the form and content required by section 52 of the *Act*, I find that the landlord is entitled to an Order of Possession to take effect on February 28, 2018, the date when the tenant's existing payments for occupancy of the rental unit expire.

As the portion of the application for dispute resolution considered in this hearing has been dismissed, I make no order with respect to the recovery of the filing fee.

Conclusion

The application to cancel the 1 Month Notice is dismissed without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on February 28, 2018. Should the tenant(s) and any occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I also dismiss the application to recover the filing fee from the landlord.

The remainder of the application for dispute resolution is dismissed with leave to reapply.

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 26, 2018

Residential Tenancy Branch