



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEKINOW NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

Both Tenants and two agents for the Landlord (the “Landlord”) were present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package. The Tenants confirmed receipt of a copy of the Landlord’s evidence package and confirmed that they did not submit any evidence prior to the hearing.

As stated by rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*, the respondent’s evidence must be received by the other party and the Residential Tenancy Branch at least 7 days before the hearing. Neither party brought up any issues regarding service. However, while the Landlord submitted their evidence to the Residential Tenancy Branch 5 days before the hearing, I accept the testimony of the Tenants that they received the Landlord’s evidence 7 days prior to the hearing. Therefore, I accept the Landlord’s evidence and it will be considered in this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by a tenancy agreement submitted into evidence. The tenancy started on June 1, 2019. Rent in the amount of \$750.00 is due on the first day of each month and a security deposit of \$500.00 was paid at the start of the tenancy. The tenancy began with one tenant in 2016 and a new agreement was signed with both Tenants set to begin on June 1, 2019.

The Landlord testified that they served the Tenants with a One Month Notice on June 26, 2019 by posting the notice on the Tenants' door. The Tenants confirmed receipt of the One Month Notice on or around June 26, 2019.

A copy of the One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant or a person 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 or person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

The Landlord stated that they served an addendum to the Tenants with the One Month Notice which was also submitted into evidence. The addendum outlines the events that occurred that led to service of the One Month Notice which I summarize as follows:

- May 16, 2019, Landlord noticed "extensive water damage to the kitchen ceiling and bathroom floor". Damage had not been reported to the Landlord previously
- May 22, 2019, pest control attended the home for bed bug treatment and the Tenant refused entry and was "verbally abusive"
- May 31, 2019, Tenant "verbally abusive" towards Landlord and repair person and did not allow entry to work on repair of water damage issue

- June 5, 2019, Landlord received a complaint from another resident regarding Tenant's "aggressive remark" and swearing

The Landlord provided further testimony regarding the incidents noted above. They stated that when they noticed the water damage it was significant, including a large water stain above the kitchen sink, water damage to the bulkhead, and water damage to the cabinets with one cabinet missing. They stated that they also assessed the bathroom floor above the kitchen and the floor was wet, soft and rotting.

The Landlord stated that the Tenants told them they had not noticed anything. The Landlord noted that by not reporting the water damage the Tenants caused significant damage to the property which could have been mitigated if reported earlier. The Landlord submitted photos which they referenced as showing bubbling paint in the kitchen and damage to the ceiling and kitchen cabinets.

The Landlord stated that they had a restoration company come to dry out the water and it was noted that the leak in the bathroom had likely been occurring for several months. The Landlord stated that the Tenants stopped cooperating when further repairs started such as drywall repairs. They also noted that due to the condition of the rental unit through piles of garbage, clothing and furniture, it created safety issues for workers coming into the rental unit. The Landlord referenced their photos of the rental unit that they submitted into evidence.

The Landlord also testified as to the incident on May 31, 2019 when their maintenance person came to work on the repairs to the unit. They submitted an email dated July 9, 2019 from the maintenance worker which states that they attended the home and notes in part the following:

While we were inspecting the bathroom a man started yelling somewhere in the house and he expressed some threat towards us. He claimed that we unlawfully entered the suite and made us feel very unsafe; therefore, we left the premises.

The Landlord submitted a copy of a notice to enter the rental unit dated May 27, 2019 to complete repairs on May 31, 2019.

The Landlord also submitted an email dated July 10, 2019 from a pest control company. The Landlord testified that they had sent the Tenants a letter regarding upcoming bed bug treatment, but when the professional attended the rental unit they stated that the

Tenant was aggressive and refused to leave the unit which is required for the treatment to take place. As a result, the Landlord stated that the company could not conduct the treatment and therefore the unit remains untreated. In the email, the pest control company states in part the following:

Upon arrival, the tenant had not complied with all the pretreatment procedures. He was using all manner of foul language on myself and my technician who was on site. He was verbally abusive and aggressive. He refused treatment of the unit and based on the level of infestation in this unit it is likely that the infestation could spread to the other neighbouring units.

The Landlord testified that they never enter without proper notice to enter except in the case of emergency repairs.

Lastly, the Landlord testified as to altercations between one of the Tenants and another occupant. They stated that the Tenant was verbally abusive and confronted the other man through provoking a physical altercation and swearing at him. They stated that they are concerned regarding the Tenant's aggressive behaviour.

The Tenants testified that there was one incident between 2017 and 2019 with another occupant and that it was worked out between the parties. The Tenant also noted that this did not occur on the residential property. The Tenants denied any aggressive behaviour or verbal abuse towards any other occupants, the Landlord or any professionals working on the property.

The Tenants further testified that there has been no inspection in their rental unit for three years and if there had been then the water leaking issue may have been noticed. They stated that they did not notice any water damage issues and if they had, they would have reported it. They stated that it was a slow leak under the toilet and the damage was not noticeable until the water stain on the ceiling was pointed out by the Landlord. They stated that there was no water in the bathroom and that the floors did not seem to have issue and were even when walking on them. The Tenants stated their position that it is not their job to inspect the rental unit for issues.

Regarding the paint bubbling on the wall, the Tenants stated that they didn't see it, but if they had they would not have thought anything of it and noted that it did not look bad.

The Tenants stated that one of the kitchen cabinets fell while putting dishes in and they reported this to the Landlord when it happened. They noted that they did not want the cabinet re-installed in case it happened again due to safety concerns.

The Tenants testified that they never refused entry to anyone, but that the Landlord entered unlawfully during the bed bug inspection. They also stated that they never provided permission for the photos of their rental unit to be taken. They noted that the Landlord had entered the unit before the water damage was noted so it was not due to an emergency repair.

The Tenants also testified that on the day the pest control company attended their children were sick and were under doctor's orders to not leave the home. The Tenants stated that they were not aggressive about conveying this to the pest control company but instead there was nothing they could do as they could not leave on that day for the treatment to take place.

Analysis

As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. As the Tenants received the notice on or around June 26, 2019 and applied to dispute the notice on July 3, 2019, I find that they applied within the timeframe allowable under the *Act*. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The Landlord served the One Month Notice pursuant to Sections 47(1)(d)(ii) stating that the tenant has seriously jeopardized the health or safety or lawful right of another occupant of the landlord, 47(1)(d)(iii) that the Tenant has put the landlord's property at significant risk, and 47(1)(f) that the Tenant has caused extraordinary damage to the rental unit.

The parties were not in agreement as to what occurred regarding aggressive and/or abusive behaviour towards others, not allowing access to repair workers and pest control, and not reporting water damage in the rental unit.

When two parties to a dispute resolution proceeding provide different accounts of what occurred, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. In this matter, I find that the Landlord has submitted sufficient evidence to support their testimony.

In particular, I find the emails from the maintenance worker and the pest control company to be compelling evidence as to what occurred. Both emails state that the Tenant was verbally abusive and note that the Tenant's behavior interfered with the ability to complete the repairs and conduct the bed bug treatment.

I accept these two emails as evidence and find that they establish that the Tenant was verbally aggressive towards the professionals and that the behaviour has put the Landlord's property at significant risk by not allowing repairs or treatment to continue.

Although the Tenants stated that there were times that the Landlord entered without notice, the email from the pest control company states that notification was given, and I find evidence of a notice to enter regarding maintenance on May 31, 2019. Therefore, I find it unreasonable that the Tenants would not allow entry or would be aggressive towards the professionals and/or Landlord when entering.

While the Tenants stated that they were unable to leave the unit for bed bug treatment due to illness, I do not find evidence of this before me. I also note that the email from the company states that the Tenant was "verbally abusive and aggressive" and using "all manner of foul language", instead of advising the technician of the illness and rescheduling.

Regarding the water damage in the rental unit, while it seems that the damage occurred from a leak in the bathroom, I do find that not reporting the issue right away caused further damage in the rental unit and risk to the Landlord's property. I accept the evidence from the Landlord which includes photos which show bubbling paint and damage to areas of the kitchen. I also accept the testimony of the Landlord that the bathroom floor was significantly damaged such that it was noticeably wet and rotting.

Therefore, based on the testimony of both parties and the evidence of the Landlord, I find it likely that the Tenants noticed some water damage in the rental unit and chose not to report the issue to the Landlord. Both parties agreed that the water leak had likely been occurring for a period of time. Due to the significant nature of the damage as

described by the Landlord and supported by the photos, I find that the Tenant's put the Landlord's property at significant risk by not reporting the issue as soon as it was noticed. As stated in Section 32 of the *Act*, both parties have responsibilities in maintaining and repairing the rental unit, but a Landlord is unable to repair an issue if not aware it is occurring.

Therefore, based on the reasons outlined above, I am satisfied that the Landlord has met the burden of proof to establish that the One Month Notice is valid due to the Tenants putting the Landlord's property at significant risk.

Accordingly, the Tenants' application to cancel the One Month Notice is dismissed.

Upon review of the One Month Notice, I find that the form and content comply with Section 52 of the *Act*. Therefore, pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession. I award the Landlord an Order of Possession effective August 31, 2019 at 1:00 pm.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **August 31, 2019 at 1:00 pm**. This Order must be served on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 23, 2019

Residential Tenancy Branch