Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- authorization to recover the filing fee for this Application from the landlord, pursuant to section 72.

The hearing of December 03, 2019 was adjourned and reconvened on December 17, 2019. On December 03, 2019, the landlord (MH), the tenant (PM) and the tenant's advocate and witness (MR) attended the hearing and were each given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

On December 17, 2019 only the tenant and her advocate attended. I left the teleconference open until 10:45 AM in to enable the landlord to call into this teleconference hearing scheduled for 9:30 AM.

On December 03, 2019 I confirmed that there were no issues with service of the tenant's Application for dispute resolution and evidence. The landlord confirmed receipt of the tenant's Application. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were duly serviced with the Notice of hearing and evidence.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to end tenancy that is compliant with the *Act*.

Preliminary Issue – Amending the Application

I note that the tenancy address provided on the Application does not include the unit number. I note that both parties gave testimony that the tenant lives at unit 4 of the address provided, and there are several documents confirming the tenant lives at unit 4. Section 64 (3)(c) of the Act allows me to amend the application to include the correct complete address, which I have done.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. Is the tenant entitled to recover the filing fee for this Application from the landlord?
3. If the tenant's Application is dismissed, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence provided by the parties, including documentary evidence and the testimony of the parties and witnesses, not all details of the respective submissions and arguments are reproduced here. I explained to the parties it is their obligation to present the evidence produced.

The tenant (PM) testified there is a written tenancy agreement. The landlord (MH) testified there is no written tenancy agreement. Both parties agreed the tenancy started in August 1997, rent is $1,010.77 and is due on the first day of the month. A security deposit equivalent to half a month's rent was collected at the outset of the tenancy and the landlord still holds it. There are no rental arrears.

Both parties also agreed that the Notice was posted on the tenant's door on September 17, 2019. The effective date of the Notice is October 31, 2019.

A copy of the Notice was provided. The grounds to end the tenancy cited in the Notice were:

- Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord.
    - put the landlord's property at significant risk.
- 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.

The Notice also specifies that:

> Tenant kicked back door of building and caused extraordinary damage to door. Back door is now significantly broken and causes security issue to building. Tenant refuses to comply with requests to have backdoor fixed. Tenant was given three weeks to do

> repairs. Within that time tenant stated in writing her intention to not comply with requests to fix door. Three week period ended September 15, 2019.

The landlord provided a significant amount of testimony, including specific details and relating a large number of documents provided as evidence for the Notice.

The landlord showed Video 1, proving that the back door of the house closed properly on August 07, 2019. The landlord affirmed that she asked the tenant to keep the door closed after dusk.

The landlord submitted letters numbered 1 to 70. Letter 1, addressed to all tenants, dated August 13, 2019, explains that:

> So, in order to assure building security and compliance with fire regulations, the owner has requested we not tie or prop the door open at all from today onward.
> Also, because of security concerns as well as unfortunate inflammatory behaviours by some tenants, the owner agrees to have security cameras around the building. I will install the first one so that it faces the back porch/door area outside the building this week. No cameras will be placed to view inside the building, for privacy.

In Videos 2,3, 3a and 3b, the landlord asks the tenant to close the door and the tenant refuses to close the door at night. The tenant speaks loudly with the landlord and refuses to close the back door. Video 5 shows a damage to the door, as well as photographs 1 to 5 (the landlord affirmed that these photographs were taken on August 21, 2019).

The landlord testified the tenant willfully kicked and damaged the back door a few days after the altercation shown in Videos 2, 3, 3a and 3b.

The landlord asked the tenant in Letter 4, dated August 21, 2019, to repair the damage caused to the back door, and to adjust her behaviour. Letter 5, dated one day after Letter 4, asks again the tenant to address the back door issue and explains that the landlord will notify the owner that tenant PM is unresponsive.

Letter 6, from the tenant, addressed to the landlord, dated August 25, 2019, regarding the back door issue and contacting the owner because the tenant is unresponsive, states: “Please don’t do that. Sorry for not contacting you sooner, but I’m awaiting information and quotes. The door closes and locks securely currently. Please allow me the time to get the expected information.”

Subsequently, letters 7 to 15, between landlord and tenant, discuss the back door issue. In Letter 13 the tenant denies responsibility.

The landlord also referenced Letters 12 and 16. Both are signed by carpenters and state that the damage caused to the door was caused by excessive force.

Letter 26, signed by tenant in the same building JB, dated September 11, 2019, states:

> I have had the unfortunate experience of witnessing [tenant PM] verbally attack [landlord MH]. [PM] came into my apartment uninvited, after knocking on my door to complain about [MH]. When she realized [MH] was in my apartment talking to me, she came in and approached [MH] who was sitting. [PM] walked right up to her closely, stood over her and yelled at her, complaining about how she was being treated "unfairly" because she wasn't getting what she wanted. I saw [MH] sit quietly and just repeatedly respond to [PM], "please don't yell at me", "I gave you the same notice as everyone else", "please stop yelling at me" in a calm voice. [PM] stood over [MH] and yelled at her, caller her names and was generally abusive to her for a solid 5 minutes. Then [MH] stood up and told [PM] was enough – that if she had complains [sic?] she should contact the Residential Tenancy Branch, and [MH] walked away from her. I could see that [PM?] was shaking, I was shocked at [PM's] aggression and was concerned for [MH?]. I asked her later if she was ok. IT was completely inappropriate and really hostile on the part of [PM]. She was unwelcome in my home, especially doing something like that.

Letter 3, signed by MH2 on September 16, 2019, (the father of another tenant of the same building where the tenant lives), described a similar incident.

Letter 27, dated September 11, 2019, signed by AQ (owner of the building), describes the damage to the door. AQ states:

> […]
> This tenant has been a problem for her entire tenancy due to her continual unfounded complaints and her troublesome behaviour around the building. When there was an unauthorized sub-letter making a workspace in the firelane, [PM] supported him by supplying him with power, despite the fact that she knew he was not allowed to be there and that he had been served an eviction notice. When she moved from suite #1 to Suite #4, we had to pay $850 to have a professional painter come in and repaint her apartment due to the extensive, dark painting and texture she did in every room, without permission. When she was approached by the manager about this, she refused to pay for the repainting saying there was no paperwork to say she couldn't. She was then told in writing that she was not permitted to paint without permission, but on the manager's inspection at a later date, the manager reported that she had again painted parts of her apartment in multicolours without permission.
> […]

> This summer just past, [MH] communicated more with me about the problems around the property arising from [PM]. In particular, she related to me the difficulty she had in getting [PM] to simply close the back door at night. This was a security concern and [PM] refused to comply with [PM] request to keep the door shut at night. I was very concerned about this and let [PM] know that this is not only a security concern, but a fire regulation concern as well. I gave [MH] permission to install a video camera facing the back door in order to increase security and to deter [PM] from her persistent defiance of security requests.
> […]
> [PM's] history of non-compliance and her concerning behaviours this summer have shown us that she is not capable of living peacefully or safely as a tenant in my family's building, and that she has no intention of working cooperatively with the manager of the building. We are very concerned that she is capable of damaging the building and that she does not take responsibility for her actions. I know [MH] had tried to manager her for a very long time, but Ms. [PM's] behaviour has become brazen and unsafe. I do not wish to have more mischief or damage to my family's property. We would like to end her tenancy."

Letters 39 and 40 (August 2019) delve in details regarding history of the tenant's non-compliance. In Letter 39 the landlord writes to PM:

> I have been clear countless times over the past 10 years of my management of this building that you need to ASK and COMMUNICATE your concerns, requests or needs regarding this building to me BEFORE you take the liberty of helping yourself to things that do not belong to you or taking the liberty of changing things around the building. I'm sorry, but if you persist in crossing boundaries I've set out regarding the use of common space and gardening around the building, I will have no choice but to contact the RTB and make a formal complaint that you are interfering with the management of this building.

Photograph 5a and Videos 6 and 7 show the hose that the tenant was using in the garden without permission.

Letters 44 and 45 (dated September 07, 2017) refer to examples of the tenant interfering with the landlord and disturbing other occupants, the tenant's inappropriate behaviour of placing her dresser on the back porch.

Letter 50, dated September 04, 2019, in response to an inquiry from the tenant the week before (Letter 49), explains that the tenant can not tie objects to the outside railing of the back porch:

> Thank you for writing asking about the safety of bungeeing your clay planter box to the outside of the railing on the back porch.

> Tying or bungeeing something heavy to the outside railing of the back porch is unsafe because of the risks involved in placing a heavy object on an outside railing one storey up above a gate/walkway. For example, IF the bungee comes undone, IF the bungee snaps, IF you drop it while putting it there or IF you drop it while undoing it, IF something shakes the porch, or IF one of any number of situations arises, the best case is that the planter falls and smashes. The worst case is that someone is seriously hurt or killed. While you may think this unlikely, as the manager of this building, it is my job to assess the risks and safety of the building, its tenants and others around the building, and to do what is necessary to keep things safe.
>
> In assessing risk, I do take into consideration the necessity/importance of the action and judge whether it offsets the risk. In this case, it is completely unnecessary to put your full, clay planter box on the porch railing at all. Your own window ledge, where the planter usually sits, is literally only 4 steps away. On the window ledge or on the porch railing, the air is the same, the breeze, the eastern exposure, access to pollinators, etc. – everything is the same, and your plants do have direct sun in the morning, as mine do, which is enough for any plant. This is not a necessary risk by any means, so it's one I'm not willing to take.
>
> I understand that you consider your bungeeing ability excellent, and that it should grant you the right to bungee at will. However, I'm afraid your assessment of yourself is not a deciding factor in my assessment of risk, nor does it outweigh or even balance the ultimate liability of my management decisions, or the possible impact on others, including the owner, should anything go wrong. No manager/owner can leave the final responsibility of judging safety and liability to tenants. Ultimately, determining safety is up to me and the owner, not up to any tenant, although we have a hope that tenants know what is safe and what is not. In this case, I'll be clear with you so you know: The need for you to bungee your clay planter box on the outside of the porch railing does not outweigh the risks. Please don't do it again. It's not safe. Please keep your planter box on your own window ledge.

Photographs 6, 7 and 8 show a planter box tied to the outside railing of the back porch with a hand-written notice affixed to the planter stating it will be there "for a few hours only".

In Letter 53, dated May 18, 2019, the landlord instructs the tenant not to hang her personal laundry in the common area garden. Photographs 9 to 13, dated august 2019, show the clothing of the tenant in the common area garden.

At the reconvened hearing, the tenant's advocate MR testified on behalf of the tenant. He also provided a long testimony, presenting the tenant's evidence and rebutting the landlord's evidence.

The advocate initially stated:

- The tenant did not cause the door damage;

- The tenant did not disturb other tenants;
- The tenant did not cause risk to the property;
- The unreasonable disturb is not specified on the Notice;
- The Notice implies that the reasons for eviction are hanging clothing in the backyard, using the own garden's hose. However, these are normal actions a person does in life;
- There is no evidence the tenant did egregious or incurring interference in the property;
- The door has been out of alignment for years and the tenant always made sure it was closed and locked;

On July 07, 2019, another tenant in the four-suite building complained about the door. The SMS presented says: "I just wanted to let you know that the back door at the top of the stairs isn't closing properly. When I locked it to leave the door latch wasn't catching."

The advocate referenced a photograph dated August 07, 2019. This door sign (page 12 of the tenant's submission) indicated there were no issues and that the door remains secure.

The advocate also claims there is no evidence that the tenant damaged the door. The door is old and Letters 12 and 16 claim that the door is out of alignment and has not been repaired in twenty years or more.

The sign dated August 22 (page 13 of Tenant's submission) says: "Door is broken due to tenant's kick. Please make sure latch is securely shut (door does not meet frame fully anymore). Please close gently until door is fixed. Thanks" That sign indicates that the back door was still useful after the early August 2019 incident.

Regarding the damage to the door, the advocate testifies that the tenant was not opposing to help to fix the door. However, the tenant did not cause the damage.

The advocate further testified the landlord has a personality conflict with the tenant and this is why she is attempting to evict the tenant. It is very difficult to find a new living arrangement in the current rental market.

The advocate provided the following testimony as a witness for the tenant:

> To whom it may concern,
> I helped [PM] move into the building at [dispute address] more than 22 years ago and have visited her there often over the years, so I know the building fairly well. I was there on the day that [MH] moved in as well, some 4 or 5 years later.
> The door to the back stairway has been out of alignment for many years and we've had to lift, or pull, or tug it to get it to close properly. I was often concerned about the extra strain this put on the door handle.

> The building manager, [MH] uses the same door almost daily and would have been well aware of this, too. Over time it has been getting worse and in fact, it was reported to her as a worsening issue by another tenant well before the alleged 'kicking' incident that the manager is currently citing.
> In the meantime, the tenants have been dealing with it as they must on a daily basis, probably giving the door an extra hard pull or push or even a slam.
> I was not present at the time of the incident, but knowing [PM] as well as I do, I'm quite sure there was no deliberate or wilful intent to cause damage. There is just no way I could imagine her willfully causing damage to the place where she lives.
> […]
> In closing, I feel it is important to note that, as [PM] has indicated in her statement, and others familiar with the situation have mentioned as well, the building manager has some personal issues with [PM], which may be affecting their management decisions and attitude towards [PM]. It is unfair at best, and could arguably be characterized as an abuse of authority. So I would hope that they can come to some form of understanding and acceptance that will allow them both to enjoy a peaceful co-existence.
> I hope this helps to clarify the issue. I will be happy to answer any questions.

The complete text of this testimony is on pages 9 and 10 of the tenant's submissions.

The advocate also presented four letters from friends and neighbours of the tenant affirming she is a person of good nature (pages 21 to 24 of the tenant's submissions).

The landlord's Letter 1 dated August 13, 2019 changes the building guideline. The back door could be left opened before this Letter (dated August 13, 2019). As the tenant works afternoon shifts, she would open the door late at night. The advocate adds that this is not a problem because the property is monitored, gated and closed.

Videos 1, 2, 3, 3a and 3b show an interaction between the tenant and the landlord on August 04, 2019, not August 14, 2019. The advocate adds that Video 3b is a manipulation of the landlord, since she is a psychologist and was using of her professional knowledge to manipulate the tenant.

In Video 4 the tenant is not inspecting possible damages to the door, but rather checking the latch because she was locked out of the building and trying to get back in.

The landlord asked the tenant in Letter 4, dated August 21, 2019, to repair the damage caused by the back door, and to adjust her behaviour. The advocate affirms that this Letter is unfair and it wrongly assumes the tenant caused the damage to the door.

In Letter 6 the tenant was trying to help fix the back door not because she felt she was responsible for the damage, but because as an electrician she knows what would be needed to fix the back door.

The tenant wrote directly to AQ, the building owner, on August 24, 2019 because she thought she had a good relationship with him and believes the tenant is providing a false picture of the tenant to AQ.

The advocate also testified that the landlord micromanages the property and interferes with the tenant. One example of this are letters 18 to 70, relating older issues dating back to 2012. Specific examples of the interference are the prohibition of: gardening, hanging the clothing in the backyard, hanging the umbrella on the door.

Letter 27, from the building owner AQ to the Residential Tenancy Branch, was a shock to the tenant, since it has untruth statements and was influenced by the landlord. The advocate added that it is unfortunate that AQ did not give testimony in the hearing.

The advocate also affirmed that the tenant is a psychologist and treats emotional issues like stress and anxiety. However, she has no compassion with the tenant and is manipulating the building owner AQ in order to evict the tenant.

I asked the tenant why she was getting cost estimates to repair the door if she did not damage the door (Letter 6). After consulting with her advocate, the tenant stated she only inquired about information and quotes because she wanted to find out how much it cost to repair the damaged door.

Regarding letters 39 and 40 (the landlord's prohibition against gardening), the tenant stated the gardening is on city property, not the landlord's property.

The tenant also stated she did not tie the planter box to the railing with a bungee cord after being ordered no to do so in Letter 50.

In final arguments, the advocate affirmed the tenant is doing her best to live within the rules of the building. The tenant is not sure how the damage to the door happened and being evicted is unfair as the tenant has not acted egregiously and there has been no extraordinary damage caused by the tenant.

Analysis

Section 47 of the Act allows a landlord to end a tenancy for cause:

> **47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> […]
> (d)the tenant or a person permitted on the residential property by the tenant has
> (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
> (iii)put the landlord's property at significant risk;
> (f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
> (g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;
> (4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

The landlord is attempting to end this tenancy because the tenant interfered with the landlord and other occupants, put the landlord's property at risk, caused extraordinary damage to the property and did not do repairs.

The landlord served the Notice on September 17, 2019, and the tenant filed this Application on September 25, 2019. I find that in accordance with Section 47 (4) of the Act, the tenant's application was submitted before the ten-day deadline to dispute the Notice.

I am dividing the analysis of the long evidence submitted by both parties, and testimony provided in over two hours of hearing, in four subsections: back door, gardening, personal objects in the common areas and behaviour of the tenant.

Back door

Letter 1, from the landlord to all tenants, explains that the back door of the building, must be closed at night. That Letter does not indicate that this is a new policy, but, instead it only reinforces an existing policy:

> As well, there has been a serious and difficult issue with security regarding this door over the past week: the door has been propped open at night, even all night long a few weeks ago, **despite there being a clear sign on the door requesting the door be closed at dusk, despite my verbal requests, and even despite me actually closing the door: the door continued to be purposefully re-opened late at night in open and careless defiance of my requests**. (emphasis added)

Residential Tenancy Branch Policy Guideline 01 states (page 06):

> 7. In a multi-unit residential premises, in addition to providing and maintaining adequate locks or locking devices on all doors and windows of each individual unit within the premises, the landlord is responsible for providing adequate locks or locking devices on all entrances to common areas in the premises and on all storage areas.

The Videos 2, 3, 3a and 3b, show a tense altercation between the landlord and the tenant that happened in August 2019. The tenant, speaking loudly and in an aggressive tone, refuses the request of the landlord to close the door at night. The tenant is clearly aware that she is being recorded, but still challenges the landlord's request to close the door at night and walks away. The landlord is speaking calmly and politely at all times.

I find the tenant was acting aggressively and not following a reasonable request of the landlord to close the door at night. I further find that the style of speaking and articulation of the tenant is not a common style and is aggressive and inappropriate behaviour that significantly interferes with the landlord. During the two hearings the tenant always spoke calmly and politely.

I also find the refusal of the tenant to close the door at night puts the landlord's property at significant risk, especially because the door gives access to all the apartments in the building. Closing the door at night is a reasonable request. The tenant refusing to close the door at night puts the landlord's property at significant risk.

According to the landlord's testimony, a few days after the tense altercation shown in Videos 2, 3, 3a and 3b, the tenant deliberately kicked the door, causing great damage and refused to repair the door.

In Letter 4, dated August 21, 2019, the landlord asks the tenant to fix the back door because of her deliberate act of violence against the door:

> There has been significant damage done to the back door because of your kick. You kicked the entire door frame apart from itself, and have pushed the hardware through to the plaster on the inside. There are cracks in the plaster, the wood trim on the inside is coming apart and it now does not meet the top frame when closed. This is serious damage which renders the building less secure.

In Letter 5, dated August 25, 2019, the landlord reiterates the request for the tenant to fix the back door. The tenant replies in Letter 6 explaining she is getting quotes to fix the damaged door.

I find the tenant's testimony that the tenant was only trying to help with the back door because the tenant, as an electrician, knows what it is necessary to fix the damaged door lacks an air of reality and is not credible.

Based on the testimony of both parties and the evidence submitted, I find, on a balance of probabilities, it is more likely than not the tenant was looking for quotes to fix the door because she caused the damage to the door.

Based on the above, I find that the actions of the tenant (speaking aggressively with the landlord, refusing to close the door at night and damaging the door) significantly interferes with the landlord and puts the property at significant risk, contrary to section 47(d)(i) and section 47(d)(iii) of the Act.

Section 32 of the Act states:

> 32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that:
>
> […]
>
> (3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find the tenant has not done required repairs of damages caused to the site, despite initially admitting responsibility for the damage.

Gardening

Gardening in the rental property is another point of conflict between tenant and landlord. There is no evidence the tenant ever had the right to garden. No written tenancy agreement was produced, and the parties offered conflicting testimony about the existence of a written tenancy agreement. Both parties agree the rental unit is a suite on the second floor of a building, not a single-family house. Thus, it is the landlord, not the tenant who is responsible for garden maintenance.

Residential Tenancy Branch Policy Guideline 01 states (page 07):

> PROPERTY MAINTENANCE
> 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
> 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
>
> 3. Generally the tenant who lives in a single-family dwelling is responsible for routine

> yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
>
> 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible

As the tenant's unit is on the second floor, I find it unlikely she had a right to do gardening at the rental property.

The landlord produced Letter 39, dated August 03, 2019, where it is explained to the tenant she does not have the right to garden in the easement garden of the property. Photograph 5a, dated August 21, 2019, shows a hose purchased by the tenant in the garden.

I find the tenant has not complied with the orders of the landlord to refrain from gardening, and her non-compliance constitutes a significant interference with the landlord.

Personal objects in the common areas

The landlord testified the tenant continuously puts her dresser in common areas and hangs her clothing there. Letter 44, produced by the landlord, states:

> I've moved your dresser off the back porch. I waited for you to move it, as you left a note on it saying it would be moved tonight, however it's after 10pm now.
>
> I understand that you think I'm wrong. You have that right. However, regardless of your opinion, you don't have the right to disregard a written request from the manager of your rental building. I gave you reasonable grounds for my opinion, I gave you a reasonable amount of time to deal with the problem, and I suggested you contact the RTB if you had questions or complaints.

Photographs 9 to 13, dated July and August 2019, show a dresser, clothing and personal belongings of the tenant in the backyard.

When addressing this issue, the tenant affirmed this prohibition is one example of micromanaging the property.

I find that the landlord prohibiting the tenant from placing her personal furniture and wet clothing to dry in the common areas of the property is reasonable. The tenant's failure to comply with the landlord's orders is significant interference with the landlord and other occupants of the building.

The tenant provided testimony that she safely attached her planter box on the outside railing of the back porch. That is in accordance with Letter 50, dated September 04, 2019.

Photographs 6, 7 and 8, dated August 2019, show a planter box tied to the outside railing of the back porch on the second floor of the rental property. I notice a hand written notice on the three photographs saying the planter box will be there "for a few hours only".

The presence of the note on the planter indicates the tenant knows she is not supposed to put the planter there, yet the tenant is doing so for a short period of time. I find that the planter box attached to the railing of the back porch by a bungee cord represents a significant risk to the property and to people around it. I believe the tenant continued to attach the planter to the porch after the landlord ordered her not to.

Behaviour of the tenant

Residential Tenancy Branch Policy Guideline 51 states (page 05):

> Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:
>
> • A witness statement describing violent acts committed by a tenant against a landlord;
>
> • Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
>
> • Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
>
> • Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

In Letter 27 dated October 05, 2019, the building owner AQ, provides a cohesive, detailed and convincing testimony about the tenant's ongoing problematic behaviour. He affirms the tenant has a long history of non-compliance with the building rules. AQ delve into details about the door and affirms the landlord is very efficient and all the other tenants have a good relationship with her.

While the advocate expressed it is unfortunate that AQ did not give testimony in the hearing and said AQ's statements are not credible, he did not provide any specific details of why the statements are not credible aside from claiming AQ has been manipulated by the landlord.

Besides the landlord and the tenant, there are two more tenants in the building. One of them is tenant JB. In Letter 26 dated September 11, 2019, JB also provides a rich testimony about the aggressive behaviour of the tenant. JB describes one occasion the tenant invaded his apartment and upon discovering the landlord was there, yelled at her.

The incident described by tenant JB is very similar to the tense altercation shown in Videos 2, 3, 3a and 3b.

In regards to the term unreasonably disturbed, Black's Law Dictionary defines unreasonable as irrational, foolish, unwise, preposterous, senseless, immoderate, capricious, arbitrary or confiscatory.

I find that Letters 26 (from tenant JB), 27 (from the building owner AQ), 3 (from the father of a current tenant MH2) and Videos 2, 3, 3a and 3b are strong evidence that the tenant recurrently acts aggressively against the landlord, and this constitutes a significantly interference and unreasonably disturbs the landlord and other occupants.

The advocate claims that Video 3b is a manipulation, but offered no details or explanations as to why. Video 3b is part of the same altercation shown in Videos 2, 3, 3a and 3b. I find these Videos show aggressive behaviour of the tenant against the landlord.

The July 07, 2019 text messages produced by the tenant as evidence is anonymized. The BC Supreme Court held in *Stelmack v Commonwealth Holding Co. Ltd*, 2013 BCSC 342 that anonymous letters may not be relied upon owing to the high standard of procedural fairness owed to tenants facing a Notice to end tenancy for cause.

I find the witnesses statements produced by the tenant (from her friend and advocate and three other people) provide general explanations about her character, but do not outweigh the stronger evidence produce by the landlord.

I find the tenant understood perfectly the reasons for the Notice and presented a very detailed defense. The tenant submitted documents and statements in this application and called a witness in her well rehearsed defence against the Notice.

Confirmation of the Notice

I find on a balance of probabilities the tenant has significantly interfered and unreasonably disturbed the landlord and other occupants, put the landlord's property at risk and has not done required repairs of damage to the site, contrary to sections 47(d)(i), 47(d)(iii) and 47(g) of the Act.

Thus, I confirm the Notice and dismiss the tenant's Application without leave to reapply.

Section 55 of the Act states:

> 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 if 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.

I find that the Notice complies with section 52 of the Act. The effective date of the Notice was October 31, 2019, and the tenant did not vacate the property.

Based on my decision to dismiss the tenant's Application for dispute resolution and pursuant to section 55(1) of the Act, I find that this tenancy ended on the effective date of the Notice, October 31, 2019.

Therefore, pursuant to section 55 of the Act, I find the landlord is entitled to an Order of Possession effective two days after service.

As the tenant was not successful, she is not entitled to recover the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective two days after service on the tenant. Should the tenant 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: December 31, 2019

Residential Tenancy Branch