



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNC, FFT, OLC**

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a *1 Month Notice to End Tenancy for Cause*; and, orders for the landlord to make repairs and comply with the Act, regulations or tenancy agreement. Both parties appeared at the hearing. The tenant was accompanied by his mother, an occupant of the rental unit. The landlord was accompanied by his wife and co-landlord.

The hearing commenced on March 3, 2020 and, on that date, I determined the tenant had not received the landlord's evidence package. I ordered the landlord to re-serve the evidence package. The hearing was adjourned, and I issued an Interim Decision. The Interim Decision should be read in conjunction with this decision.

At the reconvened hearing, I confirmed the landlord re-served the evidence package as I had ordered, and the tenant received and had the opportunity to review the landlord's evidence package.

The tenant stated he had not received my Interim Decision. I summarized its content for the tenant and specifically read aloud my caution regarding inappropriate conduct at a hearing.

All parties were given instructions with respect to appropriate conduct and for the most part the parties complied with those instructions.

As for the address for the rental unit, the landlord remained of the position the address appearing on the tenancy agreement was correct and that BC Hydro had recently corrected their records to reflect the correct address. The tenant submitted that BC Hydro had not changed the address in their records and that after an investigation BC

Hydro continues to list the rental unit address as being different than that identified by the landlord.

In filing this Application for Dispute Resolution, the tenant identified the rental unit address as that listed on the tenancy agreement and the 1 Month Notice to End Tenancy for Cause. I was not provided with enough evidence to make a decision as to the correct address for the rental unit and I have left the rental unit address in the style of cause as that identified on the tenancy agreement, but I suggested the tenant may make enquiries with the City to confirm the street address of the rental unit.

Issue(s) to be Decided

1. Should the *1 Month Notice to End Tenancy for Cause* issued on December 31, 2019 be upheld or cancelled?
2. Is it necessary and appropriate to issue orders to the landlord?
3. Award of the filing fee.

Background and Evidence

The month to month tenancy started on October 1, 2019 and the tenant paid a security deposit of \$1100.00. The tenant is required to pay rent of \$2200.00 on the first day of every month. The rental unit was described as a two bedroom, one bathroom coach house approximately 1000 in square feet.

On December 31, 2019 the landlord personally served the tenant with the subject *1 Month Notice to End Tenancy for Cause* with a stated effective date of January 31, 2020 ("1 Month Notice").

The landlord indicated the following reasons for ending the tenancy on the 1 Month Notice:

- Tenant has allowed an unreasonable number of occupants in the unit.
- 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.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.

Below, I have summarized the landlord's reasons for indicating the above reasons, as submitted to me during the hearing, and the tenant's responses.

Unreasonable number of occupants

The landlord submitted that the rental unit is occupied by the tenant, the tenant's girlfriend, and the tenant's mother. The landlord confirmed that the rental unit can accommodate three people; however, the landlord explained that this reason was indicated on the 1 Month Notice because the tenant's mother had asserted that she is a tenant when JB is the only tenant under their tenancy agreement.

The tenant submitted that he resides in the rental unit with his mother; however, his girlfriend visits him there but that she has her own residence.

I pointed out to the parties that I had already determined the tenant's mother is not a tenant under the tenancy agreement, but is an occupant of the rental unit, at the hearing of March 3, 2020 and as reflected in the Interim Decision. I further informed the parties that I would not consider this reason for ending the tenancy further since the landlords acknowledged that the rental unit can reasonably accommodate three people if three people were in fact residing in the rental unit and this is not a basis for ending the tenancy.

With respect to occupants, an occupant has no rights or obligations under the tenancy agreement or the Act. Rather, the occupancy is permitted by the tenant and any issues the occupant may have should be brought to the tenant's attention and the tenant may raise the issue with the landlord. Similarly, any issues the landlord may have with the occupant should be brought to the tenant's attention for the tenant to address with the occupant. However, the tenant is responsible for the occupant's conduct at the property and a tenant may be evicted due to the conduct of his occupant.

Seriously jeopardized the health or safety or lawful right of another occupant or landlord

The landlord submitted that the tenant has been rude and uses profanity in speaking with the landlord. During a phone call on October 23, 2019 the tenant called the female landlord a "bitch" and exhibited racist behaviour by saying the landlords should go back to their own country and the landlords "should be shot".

The tenant denied threatening to shoot or have the landlords shot.

The tenant's mother acknowledged that her son was extremely frustrated during that phone call and he called the landlord a "bitch" but that the landlord had also called the

tenant names, including calling him a “skid”. The tenant’s mother stated the tenant did not threaten the landlords with having them shot. The landlord questioned whether the tenant’s mother was actually there for that phone call.

The landlords also submitted that in early January 2020 there was an incident involving the tenant and another tenant residing in the mobile home on the property. The landlord received a letter from those tenants dated February 11, 2020 describing the tenant’s aggressive behaviour toward their dogs and the police were called.

The tenant acknowledged there was an incident involving the other tenant’s dogs and he called animal control and the police subsequently spoke with him. The police did not arrest the tenant; rather, the police told the tenant to keep the peace.

The tenant’s mother explained that she had been severely attacked by a dog in the past and that she and her son are petrified of dogs. Also, the neighbours dogs were in heat and they were not sufficiently controlling their dogs.

The letter of February 11, 2020 indicates the other tenant on the property called the police after the tenant called animal control regarding her dogs.

Extraordinary damage

The landlord submitted that the tenant is responsible for causing mould in the closet in the upstairs bedroom. The landlord did not submit a photograph of the mould but described it as being an area approximately 2 feet by ½ foot on the upper portion of the wall in the closet. The landlord pointed out the tenant had submitted a photograph of a mouldy wall.

The tenant and his mother agreed there is a significant mould problem in the rental unit. The tenant’s mother stated she occupies the upper floor bedroom and the mould started in one closet and now there are three closets “dripping with mould”. The tenant’s mother stated she removed her possessions from the closets as they became covered in mould.

The landlord submitted the tenant made several complaints regarding water leaks and mould in the rental unit but that they have taken several steps in an attempt to make the tenant “happy”. The landlord acknowledged that they do not know the cause of the mould but concluded it must be something the tenant or his mother have done since they have explored possible causes from the exterior of the building including having

the roof, roof vents, attic and building envelope inspected. The landlord also had a plumber look for leaks in the rental unit and could not find any; and, an awning installed in an effort to shield rainfall from the side of the building. The landlord acknowledged that the mouldy drywall has not been removed or cut to see if there is mould on the backside of the drywall or in the wall cavity.

The tenant stated he is experienced in roofing and construction and he attributes the mould formation to excessive moisture and insufficient ventilation. The tenant questioned the capabilities of the person(s) the landlord hired to inspect the exterior of the building. The tenant also described how the landlord began wiping the mould on the drywall but that the tenant told him to stop as he did not want the mould spores disturbed. The tenant seeks to have a qualified mould removal company inspect, test the air quality in the rental unit, and remove the mould.

The tenant and his mother also described moisture from flooding in the rental unit when the sewer line broke and they asserted that the landlord did nothing to remediate the water that flowed into the rental unit.

The landlord confirmed that water overflowed from the toilet and the landlord replaced the sewer line due to a clog from “feminine products” but the landlord did not have the rental unit remediated for contaminated water. As for the reason why the landlord replaced the sewer line instead of unclogging the line and the reason the landlord did not have the rental unit remediated for contaminated water entering the unit, the landlord’s response was that she is “not a plumber”.

Analysis

Upon consideration of the evidence presented to me, I provide the following findings and reasons.

Notice to End Tenancy

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

With respect to the landlord’s assertion the tenant has seriously jeopardized the health or safety of another occupant or the landlord, I was provided disputed oral testimony that the tenant threatened to shoot or have the landlords shot during a phone call on October 23, 2019. The landlords did not make any submissions that they called the

police with respect to that incident. Nor, did the landlords move to evict the tenant shortly after that incident. Therefore, I find the landlord's actions inconsistent with receiving such a threat and I am not satisfied that it took place as described by the landlord.

It was undisputed that the tenant called the landlord a bitch. While I find that language and conduct uncalled for, antagonistic and inconsistent with fostering a successful tenancy, I find the name calling incident insufficient basis to conclude the tenant has seriously jeopardized the health or safety or lawful right of the landlord and I do not end the tenancy for this reason.

With respect to the incident involving the neighbouring tenants and their dogs, it is important to point out that incident occurred after issuance of the 1 Month Notice and did not form a basis for issuing the 1 Month Notice. Upon review of the neighbouring tenant's letter written on February 11, 2020, I note that the neighbouring tenant did not call the police until weeks later and after the tenant had called animal control and I find that delay inconsistent with receiving a serious threat by the tenant.

Given the tenant's conduct during the March 3, 2020 hearing, I accept that the tenant has difficulties managing his impulses and is prone to acting rudely, including using profanity. However, I also accept that this tenancy has endured a number of problems with respect to repair issues and the tenant is frustrated; however, I caution the tenant that such behaviour is unlikely to achieve the outcome he desires and that the appropriate remedy is to seek dispute resolution services available to him through the Residential Tenancy Branch.

As for the landlord's assertion the tenant has caused extraordinary damage to the property, which the landlord described as being mould in a closet, I find the landlord did not provide sufficient evidence to satisfy me that the tenant, or a person permitted on the property by the tenant, has caused the mould. Rather, the landlord appears to take this position without knowing the cause of the mould and has yet to have the wall cavity or the backside of the affected drywall inspected. Therefore, I find the landlord has not sufficiently demonstrated the tenant has caused extraordinary damage to the rental unit and the tenancy should be ended for this reason.

In light of the above, I find the landlord has not met his burden to establish the tenancy should be ended for the reasons put forth by the landlord and I grant the tenant's request to cancel the 1 Month Notice.

Orders for repairs and compliance

Both parties provided consistent submissions that there is a significant mould problem in the rental unit that requires remediation and the tenant provided photographs in support of that. Mould is generally caused by excessive moisture, but the causes may be many, and I am unable to conclude the cause in this case based on what is before me. I appreciate the landlord has made attempts to investigate the cause but, from what I have heard, I find the landlord has not made sufficient efforts to investigate the source of the moisture given the moisture and mould is still present and the landlord has not yet inspected the wall cavity and back side of the drywall where the mould is present.

I also find the landlord's lack of remediation efforts to deal with contaminated sewer water coming into the rental unit and not having the rental unit remediated to control the bacterial and possible fungal formation due to the flooding to be troubling.

In light of the above, I grant the tenant's request for orders that the landlord have the rental unit inspected, tested, and remediated for mould by a qualified professional.

I order the landlord to:

- 1. Within two weeks of the date of this decision, the landlord shall have a qualified mould specialist inspect the rental unit and perform all necessary testing to determine the air quality, locations of mould, and cause(s) of the mould.**
- 2. Within a reasonable amount of time after the inspection and testing described above, the landlord shall make the repairs in accordance with the recommendations of the qualified mould specialist.**
- 3. Upon request by the tenant, the qualifications of the mould inspector shall be presented to the tenant.**

Should the landlord fail to comply with my orders above, the tenant may make another Application for Dispute Resolution and seek further remedy.

Filing fee

The tenant was successful in this Application for Dispute Resolution and I award the tenant recovery of the \$100.00 filing fee paid for this application. The tenant is provided a Monetary order in the amount of \$100.00 to ensure recovery of this award. The tenant

is authorized to deduct \$100.00 from rent otherwise payable to satisfy the Monetary Order.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated December 31, 2019 is cancelled and the tenancy continues at this time.

I have issued orders to the landlord with respect to mould and air quality testing and remediation.

The tenant is awarded recovery of the filing fee. The tenant is provided a Monetary Order in the amount of \$100.00 and may satisfy this Monetary Order by deducting \$100.00 from rent otherwise payable.

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: May 06, 2020

Residential Tenancy Branch