



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, RP, RR, PSF, MNDCT**

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- 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 to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- a monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord PV (the "landlord") primarily spoke on behalf of the named landlords.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. The landlord disputed that they were served with the tenant's materials within the timeline required under Residential Tenancy Rule of Procedure 3.15 which provides that a respondent must receive evidence from the applicant not less than 7 days before the hearing. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party or result in a breach of the principles of natural justice. In the present case as the landlord has testified that they have received the materials and had an opportunity to review their contents, I find no

prejudice results by their inclusion nor is there a breach of the principles of natural justice. On this basis I find that the tenant's documentary evidence was sufficiently served in accordance with section 71 of the Act and include it for consideration in this hearing.

The tenant complained generally that the contents of the landlord's evidence uploaded in digital format to the Residential Tenancy site is difficult to open and review. The parties confirmed that the tenant was served with the landlord's evidence in physical form. Based on the testimonies I find that the tenant was served with the landlord's evidence in accordance with section 88 of the Act. The tenant's inability to access the dispute resolution website is irrelevant to the matter of service.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in May 2020. The landlord submits that the monthly rent is \$1,355.00 payable on the first of each month. The rental unit is a suite in a detached home with another occupant occupying another suite.

The landlord issued a 1 Month Notice dated June 30, 2020. The reasons provided on the notice for the tenancy to end is that

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

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

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submits that the tenant has failed to maintain the rental property in a state of repair and cleanliness that is appropriate. The landlord submits that they have given the tenant multiple warnings both verbal and in writing to remove personal belongings from common areas and passageways but the tenant has failed to rectify their behaviour. The landlord submitted into evidence copies of correspondence with the tenant where the tenant makes multiple complaints about the landlord's requests.

The landlord testified that the tenant has made multiple unauthorized alterations to the property including building fixtures and painting their suite in an unprofessional manner. The landlord explains that the tenant's use of the common areas of the property for storage of their possessions cause great disturbance to the other occupants who must traverse around the items to access their own suite. The tenant's own evidence consists of multiple photographs showing the state of the rental property.

The tenant gave lengthy rambling testimony on a number of issues. The tenant made submissions that the current amount of monthly rent was imposed by the landlord without the tenant's consent after the tenancy had commenced. The tenant submits that they have paid rent in full for August 2020 and therefore the 1 Month Notice is now cancelled and the tenancy reinstated.

The tenant disputes that their actions have breached any portion of the tenancy agreement or caused disturbance or jeopardy to others. The tenant claims that any alterations to the rental property were authorized and agreed to by the landlord. The tenant testified that their work has increased the value of the property and should be understood to be improvements. The tenant disputes that the items they have left on the common areas cause any disturbance or risk of harm to others who must traverse between the items. The tenant focused much of their testimony on their level of noise and lack of information from the landlord regarding noise complaints.

The tenant complained about the condition of the rental unit and testified that they have made several requests to the landlord to make repairs. The tenant submits that they feel the landlord's agents behave in a rude manner and that therefore feel reluctant to cooperate with the landlord's requests.

Analysis

The tenant submits that the landlord waived their right to seek an Order of Possession on the basis of the 1 Month Notice as they accepted rent payment for August 2020. I do not find the tenant's submission to have merit.

Residential Tenancy Policy Guideline 11 discusses the issue of waiver of a notice to End Tenancy and provides that a Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of the parties. The Guideline also provides that a situation of an implied waiver may arise where the conduct of a party is inconsistent with anything other than the intention of waiver and the other party has clearly changed their own position to their detriment.

Based on the totality of the submissions of the parties I do not find that there is sufficient evidence that the conduct of the landlord amounts to an implied waiver of the Notice to End Tenancy and reinstatement of the tenancy. The tenant submits that the landlord's acceptance of rent payment for the month subsequent to the effective end of tenancy date amounts to an implied waiver of the 1 Month Notice. While the parties agree that payment was accepted and the landlord did not issue a written receipt for the payment indicating that they were accepted for use and occupancy only, I find that there was clear communication between the parties about the landlord's intention to proceed with enforcing the 1 Month Notice.

Both parties continued to prepare and exchanged evidentiary materials in support of their positions for this hearing even after the rent payment was made. It is evident that the parties were aware that the 1 Month Notice was not set aside and that it continued to be a live issue. I do not find sufficient evidence to support the tenant's interpretation that there was a waiver of the notice to end tenancy. Not only is there no evidence of an express waiver, the evidence that was submitted supports the position that the parties were aware of the landlord's ongoing intention to enforce the notice.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month

Notice. In the matter at hand the landlord must demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant, that they have seriously jeopardized the health or safety or lawful right of another occupant or the landlord, have put the property at significant risk or have breached a material term of the tenancy agreement which they have not corrected within a reasonable time.

I find that the landlord has provided sufficient evidence to meet their evidentiary burden. The parties gave undisputed testimony that the tenant has made alterations to the rental unit and have stored belongings about the rental property. I do not find the tenant's characterization of their actions as being beneficial to the value of the property or so minor that it is not an unreasonable disturbance or jeopardy to others supported in the evidence. The tenant's own documentary evidence shows materials strewn about the property which would reasonably make traversing the area difficult and hazardous. I do not find the tenant's testimony that any work done to the property was with the knowledge and approval of the landlord to be supported in the materials or credible. I find that the act of making alterations to the property and leaving materials throughout the common areas to be actions that are inherently an unreasonable disturbance to the other occupants of the property. I accept the landlord's evidence that this is more than a merely aesthetic issue or a simple inconvenience but a hazard for those who must navigate through belongings to reach their own rental unit. I do not find it relevant that some of the items are used for maintenance of the property, items that are left strewn about and not stored after use are inherently a hazard and disturbance.

I accept the evidence of the parties that the tenant has been warned on multiple occasions that leaving items around the property is unacceptable. I accept the landlord's testimony that the items have made it difficult and treacherous for other occupants and guests to access the rental property. I am satisfied on a balance of probabilities that the tenant has caused unreasonable disturbance and serious jeopardy to others by their failure to maintain the common areas of the rental property and given rise to a basis for this tenancy to end.

I find that the landlords have provided sufficient evidence to demonstrate that there is cause for issuing the 1 Month Notice and accordingly dismiss this portion of the tenant's application.

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 an order of*

possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

Therefore, in accordance section 55 of the *Act*, I find that the landlords are entitled to an Order of Possession.

As this tenancy is ended I find it unnecessary to make a finding on the portions of the tenant's application seeking relief pertaining to an ongoing tenancy such as an order for repairs, services or facilities to be provided, a reduction of rent or an order that the landlord comply with the *Act*, regulations or tenancy agreement and dismiss these portions of the application.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant has provided insufficient evidence in support of a monetary award. The tenant's submissions include vague complaints regarding the tenancy and the conduct of the landlords. I find that much of the tenant's submissions consists of general complaints and subjective views about the landlord's character. I find that this is not sufficient to establish that there has been any breach of the *Act*, regulations or agreement that would give rise to a claim for damages. The tenant failed to provide detailed testimony on how they believe they are entitled to a monetary award nor did they provide any details of calculations or explain their reasoning. I find that the tenant

has failed to meet their evidentiary onus and consequently dismiss this portion of the tenant's application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises 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 6, 2020

Residential Tenancy Branch