



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OLC RP LRE RR FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for the following:

- to cancel a 1 Month Notice to End Tenancy for Cause dated July 31, 2020 (1 Month Notice),
- for an order to compel the landlords to comply with the Act, regulation or tenancy agreement,
- for regular repairs to the unit, site or property,
- for an order to suspend or set conditions on the landlords' right to enter the rental unit or site,
- for a rent reduction, and
- recovery of the cost of the filing fee.

The tenant, two advocates for the tenant, GM and DD (advocates), the landlords, a property manager for the landlords, MD (agent), and a witness for the landlord who did not testify, DR (witness) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The relevant parties were affirmed. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any valid concerns regarding the service of documentary evidence or the application.

Preliminary and Procedural Matters

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

In addition, the parties confirmed their email addresses during the hearing and confirmed their understanding that the decision would be emailed to the parties. If an order is granted, it will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 15, 2020 and is scheduled to revert to a month to month tenancy after August 31, 2020. Monthly rent is \$900.00 per month and is due on the first day of each month.

The tenant confirmed that they received the 1 Month Notice to End Tenancy for Cause (1 Month Notice) dated July 31, 2020 and had already filed to dispute an earlier 1 Month Notice dated July 7, 2020 that was issued without using the landlords using the correct form under the Act. The parties were advised that July 7, 2020 document was of no force or effect and did not have to be disputed as it was not served on the correct RTB form and therefore is of no force or effect. As a result, the parties were informed that I would be dealing with the 1 Month Notice dated July 31, 2020 in this decision, which was served on the tenant and was on the correct form.

The 1 Month Notice lists two causes including:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. 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.

The tenant disputed the 1 Month Notice before the 10-day timeline provided for under the Act. The effective vacancy date indicated on the 1 Month Notice is listed as August 31, 2020. The tenant received both pages of the 1 Month Notice as both pages were submitted in evidence by the tenant.

Regarding the two causes, the landlords testified that the tenant was served with a total of six warning letters to cease smoking directly outside of the rental unit as the tenant was notified that the smoke was impacting the occupants (the landlords) living directly above the tenant. The tenant admitted during the hearing that he did not stop smoking and did not deny that he sent a video of him smoking by text to the landlord. The tenant also admitted that he encouraged the landlords to serve him an eviction notice for smoking, which the landlords ultimately did.

The tenant claims that the landlords provided verbal permission for the tenant to smoke in a designated smoking area outside of the rental unit, which the landlords vehemently denied. The landlords testified that the tenant is a chain smoker and that the smoke rises and enters through their windows and disturbs their ability to sleep and enjoy their home and that the tenant has decided to taunt the landlords versus changing their smoking behaviour. In support of this the landlords referred to a text exchange which states in part from the tenant:

Hey buddy, I'm smoking outside my door! Where is my eviction notice? I demand that you serve me an eviction notice for smoking on the property!

I'm in the market for a sound system. If you know anyone with something that is insanely loud between 7:30 am and 11PM I'm definitely interested! Even better if it has some insane subwoofer and new age rap included! Will pay extra for the rap!

It's 6am July 28 and I'm outside smoking...

The tenant did not deny writing the texts as indicated above. The tenant stated that he left the property 7 days a week for up to 12 hours per day and that the landlords' version of events is an extreme exaggeration.

The tenant stated that the landlords have invited them as guests to their upstairs deck and that during the visit, the tenant smoked on their deck without objection from the landlords. The tenant also stated that the windows directly above the tenant's smoking area can not open as they are picture windows shown in a photo presented during the hearing. The landlords responded by stating that there are 2 doors to the left and one door to the right of the 2 picture windows that are open most of the time and that the smoke from the tenant is negatively impacting their enjoyment of their home and their ability to sleep, in addition to the health impacts of the second-hand smoke.

There is no dispute that the tenant has not stopped smoking directly outside their rental unit after receiving many letters from the landlords or the agent for the landlords to smoke elsewhere so that the occupants living upstairs (the landlords) are not negatively impacted by the second-hand smoke.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find the tenant has been taunting the landlords with their smoking and have negatively impacted the occupants living upstairs, which in this matter happen to be the landlords. As a result, I find the 1 Month Notice to be valid and that tenant's behaviour to be completely unreasonable when served with multiple warning letters, which I find to be valid and that the tenant has disregarded. Therefore, I find the tenant has failed to meet the burden of proof with this application and that the tenant's application is dismissed without leave to reapply as a result. In addition, I uphold the 1 Month Notice as I find the tenant's smoking behaviour has significantly interfered with or unreasonably disturbed another occupant or the landlord. I also disagree with the tenant that the landlords have exaggerated the impact the tenant's smoking has had on landlords.

I also find that the tenant's texts to the landlords to be purposely vexatious, which I find impacts the credibility of the tenant. Therefore, I prefer the version of events from the landlords over that of the tenant. As a result, I accept that the tenant is a chain smoker and that their second-hand smoke is negatively impacting the health of the landlords.

Section 55 of the Act applies and states:

Order of possession for the landlord

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.**

[Emphasis added]

I have reviewed the 1 Month Notice dated July 31, 2020 and find that it complies with section 52 of the Act. Therefore, I grant the landlords an order of possession pursuant to section 55 of the Act **effective August 31, 2020 at 1:00 p.m.**, which is the effective vacancy date of the 1 Month Notice. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. Given the above, I find the tenancy ends at 1:00 p.m. on August 31, 2020.

I do not grant the filing fee as the tenant's application has no merit and is dismissed in full.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed in full and has no merit.

The 1 Month Notice issued by the landlords has been upheld.

The landlords have been granted an order of possession effective August 31, 2020 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The filing fee is not granted as noticed above.

This decision will be emailed to the parties. The order of possession will be emailed to the landlords only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 26, 2020

Residential Tenancy Branch