Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC

Introduction

The tenant filed an Application for Dispute Resolution on July 5, 2020 seeking an order to cancel the following notices issued by the landlord:

- the June 25, 2020 Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"); and
- the June 25, 2020 One Month Notice to End Tenancy for Cause (the "One-Month Notice").

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") originally convened on August 6, 2020. In this conference call hearing I explained the process and offered each party the opportunity to ask questions. The agent for the landlord (the "landlord"), and the tenant, also represented by an advocate, attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The matter was adjourned as per my Interim Decision on August 7, 2020. This was in order to reconvene and discuss a settlement of this matter with both parties. I allowed no further submissions by either party in the interim period before this reconvened hearing on September 10, 2020.

Both parties confirmed they received the written submissions and prepared evidence of the other. On this basis, the hearing proceeded as scheduled.

Issues to be Decided

- Is the tenant entitled to an order that the landlord cancel the Two-Month Notice pursuant to section 49 of the *Act*?
- Is the tenant entitled to an order that the landlord cancel the One-Month Notice pursuant to section 47 of the *Act*?
- If the tenant is unsuccessful in seeking to cancel either notice, is the landlord entitled to an Order of Possession of the rental unit pursuant to section 55(1) of the *Act*?

Background and Evidence

Neither party submitted a copy of a tenancy agreement for this hearing. The tenant presented that this is a continuing verbal agreement between the parties, and the landlord verified the same. The original rent amount is $900.00, which then increased to $925.00, then decreased to the current amount of $905.00 on January 1, 2020. This is a $20 reduction because of the tenant's lack of laundry access. As of the date of the hearing, the tenant continues to reside in the rental unit. This is a downstairs unit, with the landlord and their spouse occupying the upstairs unit.

There is a history of notices to end tenancy issued by the landlord starting in 2019. These are listed below, with the more prevalent decisions appearing in the tenant's evidence for this hearing:

1) an April 12, 2019 decision wherein the Arbitrator denied the landlord's application for an early end of tenancy that they issued for the chief reason of the tenant posing a health and safety risk;
2) an April 29, 2019 decision wherein the Arbitrator ordered the landlord to comply with an order allowing the tenant access to the laundry and backyard and use of parking. This order was clarified by the Arbitrator on May 14, 2019;
3) a June 20, 2019 decision wherein the Arbitrator cancelled the Two-Month Notice issued for landlord's use – this decision is notable in that it explains and applies the concept of good faith;
4) a September 5, 2019 decision wherein the Arbitrator cancelled a Two-Month Notice issued for the same reason – the Arbitrator's reason for ordering the document cancelled was for *res judicata*;
5) a October 26, 2019 decision wherein the Arbitrator denied the landlord's application for an early end of tenancy that they issued for the chief reason of the tenant jeopardizing the

health and safety, as well as putting the property at significant risk – the Arbitrator found that the landlord did not meet the burden of proof to establish a significant risk necessitating an early end to tenancy;

6) a November 26, 2019 decision wherein the Arbitrator cancelled the One-Month Notice issued on reasons of significant interference or unreasonable disturbance surrounding the use of the furnace which they attributed to the tenant – the Arbitrator put the landlord on notice to maintain the furnace and provide heating service to the tenant;
7) the April 9, 2020 decision wherein the Arbitrator granted the tenant an Order commanding the landlord to turn on the heat –the Arbitrator found the evidence showed insufficient heat, and ordered the landlord to have inspection and repair to the furnace and have inspection and remediation for mould;
8) On June 25, 2020, the landlord issued a Four-Month Notice to end tenancy for their need to "decommission" the suite. This is the same date as the One-Month Notice and Two-Month Notice that are the subject of this hearing. On August 31, 2020, the Arbitrator cancelled this notice.

I list these decisions and their outcomes above as their impact is felt in this hearing concerning two more notices to end tenancy issued by the landlord. The issues overlap and give background to the reasons the landlord issued two separate notices to this tenant on June 25, 2020.

Running parallel to this is a separate matter currently before the BC Human Rights Commission. By service of the notices on June 25, 2020, the tenant's representative in that matter acknowledged the landlord's June 22 offer to settle, "including the 6-month timeline for ending [the] tenancy." They presented the "two main aspects of [the tenant's] human right complaint": these are access to the driveway and laundry. In the reconvened hearing on September 10, 2020, the parties were unable to come to an agreement on the terms of an end of tenancy due to these two issues.

In a separate letter to the tenant's representative before the commission, the landlord stated: ". . .if the occupancy is still continuing in October, we will be serving a 2 month for vacant possession of the home as well as [we] have made the final decision to take over the home on the date the mortgage is up for renewal." In this matter, in the reconvened hearing on September 10, 2020, the landlord stated he will "continue to serve two-months' notices" and had one more ready to go that he would be issuing to the tenant in short order.

I have placed the evidence and submissions of each party into two separate headings below:

1) re: Two-Month Notice

The landlord issued the Two-Month Notice on June 25, 2020. This instructed the tenant that they must move out from the unit by August 31, 2020. The reason is provided on page 2 of the 4-page document: The child of the landlord or landlord's spouse will occupy the unit.

The landlord submits this notice was issued because they "[have] the right to have the unit" and they need the space to start a family. They submit that the tenant's lawyer in the human rights tribunal matter already knows this. They stated: "the house will never be up for rent again".

In a statement signed July 27, 2020, the landlord states:

- they "officially declare" the need for the lower suite for their own use – "This is simply [their] personal need for the space for [their] own use" and do so in good faith;
- the address is being "decommissioned with the city. . .and will no longer exist in the future to further show good faith";
- their offers to the tenant have been refused "due to demands from the tenant that [the landlords] simply cannot offer".

The tenant provided a written submission dated July 21, 2020. This is supplemented by 120 pages of materials. Within these materials are previous Arbitrator decisions, two of which deal with the LL previously issuing Two-Month Notices.

In the hearing, the tenant's advocate provided their submissions on this being a repeated issuance of a Two-Month Notice by the landlord; therefore, in their submission this is *res judicata*.

They pointed to the previous Arbitrator decisions dated June 20, 2019 (pointing to bad faith) and September 5, 2019 (finding *res judicata*) showing this is the third such Two-Month Notice issued by the landlord.

They stated the issues of furnace repair and mould inspection are not being addressed by the landlord, and this represents a "clear underlying motive" for the landlord issuing this Two-Month Notice in bad faith.

2) re: One-Month Notice

On page 2 of the document, the landlord listed the following reasons and provided details on a separate two-page document:

- □ tenant or a person permitted on the property by the tenant has:
  - o significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - o seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - o put the landlord's property at significant risk
- □ tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - o damage the landlord's property
  - o adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- □ tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
- □ rental unit/site must be vacated to comply with a government order.

On a two-page statement accompanying the One-Month Notice, the landlord gave the following details:

a) guests of the tenant threatened the landlords: this involves interactions with contactors hired to evaluate mould and remediate the unit. Two incidents are outlined; both involved the RCMP. This necessitates "safety plans . . . at great cost" and "security systems". The landlord here described one interaction they filmed on camera.

b) disturbance to quiet enjoyment: The tenant calls city officials to "try to cause trouble" and pursues actions in the Human Rights Commission. Also calls to the RCMP in which the tenant cannot explain their allegations of harassment or threats. Also: "Constant harassment and fighting to defend our home and names from the constant slander." The landlord here describes interactions and comments captured on camera.

c) causing severe damage: tenant "hoarded and caused extensive mold", documented by multiple companies. Additionally, the tenant parked on the lawn and garden causing damage that resulted in "RCMP and ICBC intervention". The landlord here described actions by the tenant on camera.

d) compliance with a government order: through hoarding, the tenant has caused mould throughout the suite. The landlord was ordered to remediate, but the tenant "refuses to leave and allow the remediation". This will take 3 months to the cost of "25-35 thousand dollars." Offers to "move out packages" and "relocation and to invite to return" were refused by the tenant. They have "8 different reports" that will be submitted showing this is true and caused by the occupant."

On this point, the landlord provided: a "mold abatement" estimate showing $16,632.00 in total; a refusal by a mould cleaning business stating that the mould first needs to be remediated; photos from a January 19, 2019 inspection; a mould inspection report dated September 2019; inspection and contractor reports, one of which states the need for vacancy of the unit; a city office Encroachment Application approval; RCMP reports; and inspection pictures from a July 2020 inspection visit.

There are conflicting reports regarding the scope of work and whether the unit needs to be vacated for its completion. The landlord made the cleanliness of the unit an issue earlier in 2019; this was the subject of previous Arbitration hearings where the landlord moved to end the tenancy by submitting it was an urgent need and high risk to their own health. They attribute the cause of the mould and a persistent odour to the cleanliness of the unit, making the tenant responsible for accumulation of "dust and debris" that have increased susceptibility to pest infestations and odours that fill the entire house with use of the furnace.

The tenant responds to the reasons listed on the One-Month Notice by pointing to the history of relations between the parties. To more broadly address reasons brought forth by the landlord on this One-Month Notice, the tenant submits that there is repeated evidence provided by the tenant that "[their] belongings are not damp, moldy or odorous." Moreover: "[They have] proven to the satisfaction of 5 arbitrators from March 2019 – April 2020 that [they are] not responsible for any mold or smell that may be affecting the upper unit."

To support their Application, the tenant submitted 119 pages of evidence containing reports and assessments. These materials provide support for the tenant's submissions that:

- the unit is reasonably clean, and mould or other odours are not caused by their belongings – four previous hearings on the landlord issuing notice to end tenancy for cause, and one repair hearing have made this same finding;

- there is no need to vacate the unit to complete the work necessitated by water damage, consisting of a "1 sq metre of previously water-damaged ceiling";

- four previous hearings and one previous repair hearing bolster the finding that any smell present is not caused by the tenant;

- two previous hearings made findings on the landlord issuing notices to end tenancy for their own use, establishing an "ulterior motive to end the tenancy" and "a desire to avoid an obligation under the Act."

In their summary, they link the landlord issuing both the One-Month Notice and Two-Month Notice as follows:

> The Landlords' hostility toward this tenant and their repeated, ongoing eviction attempts based on discredited claims that the Tenant or her belongings have caused damage, coupled with an unwillingness to provide the services and repairs that the Tenant is entitled to, constitute an ulterior motive undermining any honest intention they may have to decommission the Tenant's Unit.

Analysis

1) re: Two-Month Notice

The landlord issued a Two-Month Notice to the tenant on two occasions previously, on April 29, 2019 and June 26, 2019. The tenant submitted copies of the Arbitrator decisions that cancelled these notices, on June 20, 2019 and September 5, 2019. In one decision, the rationale rested on the analysis of bad faith as pointing to an ulterior motive, where the landlord received two prior Arbitration decisions cancelling each notice to end tenancy. On the second, the Arbitrator made their finding that the principle of *res judicata* applies.

I find the same principle applies in this hearing of the tenant's Application to cancel the Two-Month Notice. This prevents the rehearing of the same fundamental issue where there is a prior binding decision.

What the landlord presents here is similar in circumstance to the situation they presented in the prior hearings last year. There has been no change in circumstances. The landlord underlined in this present hearing that it is their wish to start a family, and that the unit below will never be available for rent again.

This is not a new matter based on new facts. On my review of the evidence, the landlord's reason for issuing this present Two-Month Notice is identical to the two they issued in 2019. To be clear, subsequent events involving evaluation of the mould remediation and alleged disturbances caused by visitors to the property are the proper subject of the One-Month

Notice. These issues do not cross over into the fundamental reason the landlord issued this Two-Month Notice: their desire to have the child of the landlord, or the landlord's spouse, occupy the unit.

In the alternative, the landlord did not adequately explain or provide sufficient evidence to make the case that circumstances have changed, where the Two-Month Notice specifies the *child* or *spouse* will occupy the unit. Based on a balance of probabilities, I find the landlord is plainly referring to their personal need for the unit, along with that of their spouse. This is fundamentally the same reason at play as those provided for the two notices issued in 2019.

I find this matter is *res judicata* and the matter cannot be decided again. On this matter, I give notice to the landlord that unless they can show that circumstances have changed – with the evidentiary basis being that of a balance of probabilities – the matter remains *res judicata* should they choose to continue to issue this type of notice. The landlord has made plain their desire for possession of the rental unit. Successive notices issued on this same premise will not achieve this goal in a fair and equitable manner. This will contribute to findings that the landlord's continued attempts to end the tenancy for personal use are made with ulterior motives, and likely in bad faith.

2) re: One-Month Notice

Section 47 of the *Act* states, in part:

> (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
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> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
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> (iii) put the landlord's property at significant risk;
>
> (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
>
> (i) has caused or is likely to cause damage to the landlord's property,
>
> (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. . .

(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;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. . .

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to the reasons in oral testimony and provided documentary evidence; however, I find there is not sufficient evidence to show the One Month Notice is valid. Primarily, the evidence presented does not substantiate the grounds indicated on page 2 of the document. Additionally, evidence presented by the tenant outweighs that of the landlord on several points.

a) illegal activity:

These are threats to the landlord. Ostensibly, these are the tradespeople that come on the property and enter into the unit at the tenant's invitation. These resulted in the landlord calling to the RCMP with the complaint that these visitors are trespassing.

Although the landlord alleges threats were made, there is no proof in what the submissions show of the landlord's calls to the RCMP. Moreover, there is no evidence that the RCMP charged anyone or issued warnings.

The evidence shows the landlord approached visitors to the rental unit with camera in hand and on one occasion a loudspeaker. Moreover, there is a pattern of the landlord approaching visitors to ask of their reasons for being there, and then stating to them directly they are trespassing, in contravention of the landlord's obligations set forth in section 30(1) to not restrict access to a person permitted on the property by the tenant. This includes individuals assisting the tenant with matters of day-to-day living. The focus of the landlord's allegation here are the tradespeople who arrive to perform work and inspection at the tenant's invitation.

The tenant's evidence on this point sets out separate incidents of the landlord confronting guests to the tenant's unit: these are a family friend, tradespeople, and tenant service providers. The evidence presented by the tenants on these points is sound, and orderly in its presentation with well-documented evidence showing these incidents.

The landlord operates on the boundaries of justifiable conduct, and in the past took the extreme measure of infringing on the tenant's right to access the unit by changing the locks. The police report detailing this incident of October 24, 2019 provides that: "Police

then spoke again with [the landlord] and advised [they] do not have the legal right to change the lock and kick a tenant out without the appropriate notice." This is illegal conduct. This evidence stands in stark contrast to the landlord's evidence on visitors trespassing and allegedly uttering threats. This is evidence of tangible unlawful action by the landlord; conversely, the police evidence on visitors to the unit does not show any action from them of demonstrable illegal conduct.

The tenant's evidence outweighs that of the landlord to the extent that the landlord's conduct is called into question. With regard to the *Act* and what it provides governing a tenant's right of access, section 30(1) states: "A landlord must not unreasonably restrict access to residential property by (a) the tenant of a rental unit. . . or (b) a person permitted on the residential property by that tenant." I draw the landlord's attention to this important standard of any landlord-tenant relationship, as well as the common law tort of harassment. This conduct exposes the landlord to a lawsuit and a possible finding that civil damages are warranted.

On this reason to end the tenancy for cause, the landlord's evidence falls short of the burden of proof. The evidence presented by the tenant shows quite the opposite to be the case here; I find the actions of the landlord constitute activity that contravenes the *Act*, effectively nullifying this reason for attempting to end the tenancy.

A previous Arbitrator decision dated November 26, 2019 made a finding on this same claim: there is insufficient evidence to support the claim. This individual piece of the landlord's claim is *res judicata*.

b) <u>interference or disturbance</u>:

In their two-page submission, the landlord's description on this separate reason is vague.

First, there is no evidence of the tenant's calls to city officials regarding the landlord. Additionally, while the landlord describes the tenant complaining of "harassment and threats" to the RCMP, there is no substantial evidence showing this to be the case. By contrast, the actions of the landlord described above are set out in the evidence before me.

I find the landlord describes no specific actions of the tenant that constitute *disturbance* or *interference*; rather, they are relying on their assertions that the tenant's *words* are

causing harm. The preponderance of evidence – chiefly the number of attempts the landlord has made to end the tenancy – stands to show the landlord's actions are the source of difficulty in the landlord-tenant relationship.

In sum, the landlord's allegations of slander do not constitute threats or harassment. This is unproven in the evidence and what the landlord presents does not approach the level of interference or disturbance.

In contrast, it is the *actions* of the landlord that infringe on the tenant's right to quiet enjoyment. This is protected in the *Act* section 28 which clearly defines a tenant's "freedom from unreasonable disturbance."

c) severe damage:

The landlord's assertion that the tenant has "hoarded and caused extensive mold" is not borne out by the evidence presented or previous Arbitrator decisions noted above. The tenant presents a June 11, 2020 environmental report – one that immediately predates the issuance of the One-Month Notice and refers back to an earlier report of October 2019. It describes a "minor mould issue located in the entrance ceiling area" leaving the suite "safe to occupy".

The October 2019 report – also provided in the tenant's evidence – was the subject of a prior hearing in this matter. On a balance of probabilities, I find the sum total of the reports conclude the presence of mould is on the lower end of severity, and not solely attributable to the tenant. The conclusion is the unit is "safe to occupy". On this basis, I find it less likely that mould within is causing "extraordinary damage" as the *Act* specifies. Similarly, I find the reports, containing assessments and making recommendations, do not identify issues that are on a par with 'extraordinary damage'. My plain interpretation of the categorization that is 'extraordinary damage' is that which causes severe structural damage, essentially making the unit unlivable. The evidence here does not establish this as a reason to end the tenancy.

I make the similar consideration for what the landlord presents on the tenant driving over preliminary markings showing the development of an encroachment. The landlord provided photo evidence of this; however, the photos do not add weight to their assertion that the tenant caused damage. The parking is "0.5 feet over the property line" as shown in one photo. There is no evidence to show it cost the landlord "several hundred in repair and time" to reset marking tape that stood in what I can only describe as temporary marking to set out the encroachment permit line. It is not a "temporary

fence"; rather, it is yellow tape marking and setting off an area. Photos show the marking tape rods knocked over and this is plainly because of the tenant's vehicle. I find this does not constitute 'extraordinary damage' warranting an end to the tenancy.

In sum, on this reason to end the tenancy, previous Arbitrator decisions have dismissed the landlord's claims on this issue. Further, I find the reports submitted in sum total do not point to an extensive mould issue on the level of 'extraordinary damage'. Finally, the submission that the tenant is causing an issue due to their parking, as described, is acrimonious in nature.

On this reason to end the tenancy for cause, the landlord does not meet the burden to prove on a balance of probabilities that the tenant caused 'extraordinary damage' as the *Act* specifies.

d) vacancy to comply with a government order:

In their submissions listing reasons for issuing the One-Month Notice, the landlord states: "I have finally been ordered and to allow [*sic*] to remediate the suite but the occupant refused to leave and allow the remediation." I infer the landlord here is referring to the previous Arbitrator's decision of April 9, 2020 ordering the landlord to inspect and remediate mould, as well as repair the furnace if necessary.

Under this reason, the question I shall resolve is whether professional recommendations prescribe the need for the tenant to vacate the unit, and whether such a move out is necessary to complete the work in question. Various reports submitted by both parties describe different levels of work needed. I shall not determine which report is accurate in terms of work needed; rather, I shall determine whether any report definitively recommends that the unit be vacant. Depending on this determination, I shall decide whether 'vacancy', if required, is of such duration that the tenancy must end.

Previous Arbitrator decisions examined the assessment reports completed by professionals. These are of varying length and level of description. One report provided by the landlord from September 2019 states it is "recommended that the lower unit be vacated so proper remediation may be performed." On my review of this report, there is no timespan of completion.

The landlord provided another report from February 2020 that describes the need for content removed, carpet replaced, drywall replaced, and "bio wash." From the same

company, the landlord provided an estimate dated April 24, 2020 that lists a number of services provided, within the span of “4 to 6 weeks depending on our findings”. The report states: “it is mandatory that the unit be vacated and all content to be removed.”

On their own initiative and on the recommendation of a previous Arbitrator, the tenant has provided reports that show there is no need for vacancy of the unit. From June 11, 2020, in a report that refers to previous reports, the specific guideline is “the unit is safe to occupy. . .and can be occupied during work.” The specific findings state the work “can be done in 1 day and the tenant does not have to move” and “belongings do not have to be removed from the suite.” Referencing an earlier report provided by the landlord, the writer describes that report as not making recommendations, describing how it “appears to be based on a request for major renovation with no reasoning why this work is necessary.”

Of these two accounts, I prefer that provided by the tenant. It gives a specific recommendation of achievable work, and notes what is a realistic timeline. The scope of the tenant’s provided report is a close examination of reports from other firms. This report specifies that a differing report showing a different scope of the project is an “estimate [which] seems to include work to gut the basement which is not required.” The tenant’s submitted report is supplemented with a “Certificate of Laboratory Analysis”, with air samples sent to a lab for analysis and attaching that lab report.

In sum, one report recommends there are potentially four to six weeks of remediation work involved. This is of questionable validity given the lack of findings this recommendation is based on. The other report that the tenant relies on provides for a single day of work, which does not require a move-out by the tenant and possibly minimal interruption to the set-up of the suite.

I find it more likely than not that an arranged ‘vacancy’ for completion of work is not a reason to end the tenancy. This finding is not based on the tenant’s assertions that the landlord is deliberately avoiding completion of the remediation work.

Based on this finding, I find the landlord’s evidence to show a reason for ending the tenancy – based on compliance with a government order – does not carry weight where multiple reports conflict and there has been no definitive answer on the need for a vacant unit. Further, I find the need for a vacant unit does not entail an end to the tenancy.

To conclude on the matter of the One-Month Notice, the onus is on the landlord to prove they have cause to end the tenancy. I have assessed the evidence and determined it is not sufficient and does not meet the burden of proof to show the reasons are valid.

For this reason, I order the One Month Notice issued by the landlord on June 25, 2020 to be cancelled. The reasons for issuing the notice are not valid.

In closing, I draw the landlord's attention to Part 5.1 of the *Act* which sets out the provisions governing compliance and enforcement. This ensures compliance with the *Act*. In addition to findings I make in regard to this specific dispute, the landlord may be ordered to pay an administrative penalty.

Conclusion

For the reasons above, I order the Two-Month Notice issued on July 30, 2020 is cancelled. The One-Month Notice issued on the same date is also cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 29, 2020

Residential Tenancy Branch