



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDFORD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 13, 2020, wherein she sought to cancel a 1 Month Notice to End Tenancy for Cause, issued on August 5, 2020 (the "Notice").

The hearing of the Tenant's application was conducted by teleconference at 11:00 a.m. on September 29, 2020. Both parties called into the hearing. The Landlord's Property Manager, M.B., called in on behalf of the Landlord. The Tenant called in and was also assisted by an advocate, D.D. All in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Property Manager testified that this tenancy began January 27, 2020. The rental is subsidized such that the Tenant's portion is \$375.00 of the total \$1,260.00 rent payable per month.

The Landlord issued the Notice on August 5, 2020. The Property Manager confirmed it was served by registered mail on August 5, 2020. The reasons cited on the Notice were as follows:

- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has caused extraordinary damage to a rental unit or residential property;

In the "Details of Cause" section the Landlord wrote that on June 17, 2020 at 3:00 a.m. the Tenant drilled a hole in the concrete floor to install a safe. The drill went through the in-floor radiant heating resulting in flooding in her unit as well as three other units in the building. The Landlord further noted that this disturbed multiple tenants and was a breach of the tenancy agreement's prohibition against the Tenant making any structural alterations to the rental unit.

The Property Manager testified that when the Landlord tried to enter the rental unit at the time of the flooding the Tenant initially refused their request thereby prolonging the incident and increasing the overall damage.

The Property Manager testified that the Landlord paid \$4,470.77 in emergency repairs and a further \$673.79 in subsequent repairs. The Landlord also incurred a further cost

of \$1,214.58 for the plumbing repair. He further stated that the Tenant has not offered to pay the damages, and in any case, he doubts she would be in a financial position to do so. The Property Manager also testified that since the incident further issues have arisen with the Tenant such that the Landlord is not prepared to continue the tenancy. As those issues were not detailed on the Notice and arose since its issuance, I did not hear any further testimony from the Property Manager in this regard.

In reply to the Landlord's evidence the Tenant testified as follows.

The Tenant testified that on June 17, 2020 a guest of hers drilled a hole in the cupboard, and the pressure he used was such that the drill went through the cupboard and the floor. The Tenant stated that she was not aware that she had radiant floor heating until the water started coming up. The Tenant further stated that as soon as this happened she went downstairs and told them that she wanted to take full responsibility and to pay for the damages. She stated that the person she spoke to P.J., who is the building manager, who said that he didn't want to hear from her as she was being evicted.

The Tenant's advocate confirmed that the Tenant has paid her rent for October 2020 and the Landlord accepted this payment. The advocate asked that in the event the Tenant was unsuccessful in having the Notice cancelled that she be permitted to remain in the unit until the end of October 2020.

The Property Manager confirmed that the Tenant's rent has been paid until the end of October; he further stated that the Landlord has issued a receipt for use and occupancy only.

Analysis

The Tenant seeks to set aside a notice to end tenancy issued pursuant to section 47 of the *Residential Tenancy Act* (the "Act"); the relevant portions of which provide as follows:

Landlord's notice: 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,

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(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;

The reason for the Notice relates to an incident which occurred on June 17, 2020. The Tenant conceded that her guest drilled a hole in a cabinet and in doing so accidentally drilled through the floor and radiant heating. The result was flooding in the Tenant's unit as well as the three units directly below hers.

The evidence before me confirms the significant cost of the repairs of \$6,359.14. I also accept the Property Manager's testimony that as this occurred at 3:00 a.m. other residents were unreasonably disturbed when the subsequent flooding occurred.

I find, based on the evidence filed, and the testimony of the Property Manager and the Tenant, that the Tenant, or a person permitted on the residential property by the Tenant caused extraordinary damage to the rental unit. While the Tenant acknowledged her responsibility and stated this was an accident, such remorse does not preclude a Landlord from seeking an end to a tenancy on the basis of section 47(1)(f) of the *Act*. I therefore dismiss the Tenant's request for an Order canceling the Notice.

I have reviewed the Notice and find it complies with section 55 of the *Act*. I therefore find the Landlord is entitled to an Order of Possession.

As this was an isolated incident, I find there is no urgency to ending this tenancy. Further, the Property Manager testified that they have accepted payment from the Tenant for the month of October for use and occupancy of the rental unit. I therefore grant the Landlord an Order of Possession effective October 31, 2020. This Order must be served on the Tenant and may be filed and enforce in the B.C. Supreme Court.

Conclusion

The Tenant's request for an Order canceling the Notice is dismissed. The tenancy shall end in accordance with the Notice.

As the Landlord has accepted payment for use and occupancy for the month of October 2020, the Landlord is granted an Order of Possession effective 1:00 p.m. on October 31, 2020.

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: September 30, 2020

Residential Tenancy Branch