



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALPHA SIGMA INVESTMENTS c/o GATEWAY PROPERTY
MC and [tenant name protect privacy]

DECISION

Dispute Codes: Tenants: CNC, MNDCT, RP, RR, LRE, PSF, DRI, OLC
Landlord: MNRL-S, OPC, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- 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 suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43.

ZZ and MH appeared for the landlord in this hearing. BC represented the tenants. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The tenants confirmed receipt of the landlord's application and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find the tenants duly served with the landlords' application and evidence. As the landlord confirmed receipt of the tenants' application, I find the landlord duly served with the tenants' application. The tenants did not submit any written evidence for this hearing.

The tenants confirmed receipt of the 1 Month Notice dated October 23, 2020 which was sent to the tenants by way of registered mail by the landlord. The tenants indicated on their application that they had received the 1 Month Notice on November 9, 2020. The landlords submitted proof of service in their evidentiary materials, including receipts and tracking numbers for the notices sent to both tenants on October 23, 2020. The tracking information provided shows that both packages were picked up and signed for on October 30, 2020. Regardless of the date a package is picked up, section 90 of the *Act* states that a document that is served in accordance with section 88, unless earlier received, is deemed to be received on the fifth day after it is mailed. Accordingly, I find the tenants deemed served with the 1 Month Notice in accordance with sections 88 and 90 of the *Act* on October 28, 2020, 5 days after mailing.

Although the landlord had applied for a monetary Order of \$1,620.00 in their initial claim, since they applied another \$3,040.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$1,620.00 to \$4,660.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Preliminary Issue – Priority Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the unpaid rent and One Month Notice to End Tenancy are not sufficiently related to the tenants' other claims. The hearing commenced at 9:30 a.m. and ended at 10:25 a.m. As the time allotted was not sufficient to allow the tenants' other claims to be heard along with the application to cancel the 1 Month Notice to End Tenancy and landlord's monetary claim for unpaid rent, I exercised my discretion to dismiss the portions of the tenants' application

unrelated to the 1 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Other Issues: Conduct in the Hearing

The tenant was warned several times after repeated interruptions during the hearing, specifically at 9:50 a.m., 9:52 a.m. and 9:54 a.m. Although it is understandable that the tenant may be clearly upset by the presentation of evidence by the other party that he objected to, the tenant was informed that he would have an opportunity to respond or present evidence after the other party was finished, and that interruptions were not permitted. As stated in Rule 7.17 Rules of Procedure about presentation of evidence, “each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence.”. The tenant was informed that I had noted his objections. The tenant was also reminded several times of Rule 6.10 of RTB Rules of Procedure which states that “disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.” The hearing proceeded as scheduled after repeated warnings were given to the tenant.

Issues

Should the landlord’s 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy originally began as a fixed-term tenancy on July 1, 2019. Monthly rent is current set at \$1,520.00, payable on the first of the month. The landlord collected a security deposit in the amount of 760.00, which they still hold. The tenants continue to reside in the rental unit.

The landlord served the tenants with the notice to end tenancy dated October 23, 2020 providing the following grounds:

1. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord provided the following reasons for why they are seeking an Order of Possession on the grounds provided on the 1 Month Notice. The landlord testified that the tenant BC has repeatedly acted in a manner that has significantly disturbed other tenants and occupants, as well as the caretaker. The landlord submitted several letters, a video of the tenant, and called two tenants who testified in the hearing as witnesses. The landlord testified that the tenant's behaviour is aggressive, and despite written warnings to the tenant, the tenant has continued to act in an aggressive manner towards other tenants and the caretaker.

One of the handwritten letters was by a tenant dated May 14, 2020. The tenant states that she was parking her car when a person jumped in front of her car from behind a bush and proceeded to take pictures of her with his camera very aggressively. The tenant asked him why, and she states that he became belligerent.

Another letter entered into evidence, dated June 3, 2020, were from the tenants FB and CK. FB attended the hearing and gave sworn testimony in support of her statement. FB testified that she had experienced multiple incidents with the tenant where the tenant was aggressive towards her, or her guests. The tenant described an incident where the tenant had thrown eggs at their vehicle, and where the tenant had shouted at CK. FB wrote that she felt frightened, and was concerned that the tenant would inflict further damage.

FT also testified in the hearing as witness. FT testified that he was sitting in his apartment on November 30, 2020 when he heard the tenant talking to the caretaker in a harsh tone.

The tenant BC disputes the testimony as well as the credibility and validity of the evidence submitted. The tenant testified that the letters submitted were not notarized or properly signed, and that the other parties as well as the landlord were the parties who were acting aggressively towards him. The tenant testified that he was the one being harassed, and that he has been a nice and quiet tenant. The tenant testified that upon receipt of the 1 Month Notice that they had filed an application disputing the 1 Month Notice immediately.

The landlord is also seeking a monetary order for unpaid rent for the months of November 2020 through to January 2021. The tenant confirmed that he did not pay for

the months of December 2020 and January 2021, and that his November 2020 rent payment may have “bounced”.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenants have failed to pay rent for the months of November 2020 through to January 2021. Accordingly, I allow the landlord’s monetary claim of \$4,560.00 for unpaid rent.

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. Although the testimony of the tenant was that they had filed an application within the required time period, I note that the tenants’ initial application filed on November 12, 2020 was cancelled by the Residential Tenancy Branch as it was incomplete. The tenant was directed to complete his application, and a new application was submitted by the tenants on November 23, 2020 under a new file number. This hearing was scheduled after the new application was completed on November 23, 2020.

As stated earlier in this decision, in accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice was deemed served on October 28, 2020, 5 days after mailing. Under section 47 of the *Act*, the tenants had until November 7, 2020 to file their application to dispute the 1 Month Notice. Taking in consideration that the tracking information provided shows that the tenants had received and signed for the package on October 30, 2020, a later date, the tenants still failed to file their application within 10 days of that date. I find that the initial application filed on November 12, 2020 was incomplete and therefore cancelled. Even if that application was complete and scheduled, the application would still not meet the time requirements of the *Act*. I find that the tenants failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, November 30, 2020. In this case, this required the tenants and anyone on the premises to vacate the premises by November

30, 2020. As they did not vacate the premises by November 30, 2020, I must issue the landlord an Order of Possession if I find the 1 Month Notice to be valid.

Although the tenant disputed the validity of the 1 Month Notice and the claims and testimony of the landlord, their agents, and witnesses, and although the tenant testified that he was the one being attacked, I do not find the tenant's claims to be convincing or persuasive. I find that the landlord provided a variety of evidence from several witnesses, in the form of video footage, written statements, as well as sworn testimony during the hearing, which supports the landlord's concerns that the tenant has acted, and continues to act, in an aggressive manner towards multiple tenants and the caretaker. I find that the tenant's behaviour in the hearing, including the repeated interruptions and outburst despite several warnings, further supports the landlord's concerns that the tenant continues to act in an aggressive and threatening manner, and refuses to acknowledge that his behaviour towards others poses a problem. I find that the tenant continues to act in an aggressive manner in this multi-tenanted complex, towards multiple parties, and his behaviour has and continues to disturb others to the extent that justifies the end of this tenancy.

I find that the 1 Month Notice to be valid. I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

As the landlord was successful with his application, I allow the landlord to recover the filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$760.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord is entitled to an Order of Possession. I find that the landlord's 1 Month Notice is valid and effective as of November 30, 2020.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord's monetary claim as set out in the table below. The landlord is issued a monetary order in the amount of \$3,900.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in satisfaction of the monetary claim.

Unpaid Rent for November 2020, December 2020, and January 2021	\$4,560.00
Filing Fee	100.00
Less Deposit Held by Landlord	-760.00
Total Monetary Order	\$3,900.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' application is dismissed with leave to reapply.

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: January 5, 2021

Residential Tenancy Branch