



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT ONNI
GROUP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, MNDCT, RP, RR, DRI

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 21, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a one month notice for cause;
- an order that the Landlord comply with the *Act*;
- a monetary order for damage or compensation;
- an order for regular repairs;
- an order granting a rent reduction; and
- to dispute a rent increase.

The Tenant as well as the Landlord's Agents, J.S. and A.E., attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice to End Tenancy for Cause.

The Tenant's request for an order that the Landlord comply with the *Act*, a monetary order for compensation, to dispute a rent increase, an order for repairs, and an order for a rent reduction are dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated November 25, 2020 (the "One Month Notice") pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on December 1, 2016. Currently, the Tenant pays rent in the amount of \$1,090.00 to the Landlord each month. The Tenant paid a security deposit at the start of the tenancy in the amount of \$495.00 which the Landlord continues to hold.

The Landlord's Agents stated that the Landlord has been dealing with the Tenant's request for a new fridge for some time now. The Landlord's Agents stated that the Tenant first notified the Landlord that there was some issue with her fridge on or about June 2019. The Landlord's Agents stated that the Landlord has had a maintenance person attend to inspect the fridge, however found no issues with it. The Landlord's Agents stated that the Tenant's concerns regarding her fridge continues, to the point that the Landlord decided to replace the fridge in an attempt to resolve the matter.

The Landlord's Agents stated that in September 2020 the Landlord had a refurbished fridge delivered to the Tenant's rental unit. During the hearing, both parties acknowledged that the replacement fridge was smaller than the Tenant's fridge and that the Tenant refused the exchange given the size difference. The Tenant also stated that

the replacement fridge was dirty, mouldy, and had rust stains. The Landlord's Agents stated that a few days later, a different fridge was delivered to the Tenant, however, the Tenant refused the second replacement fridge on the basis that it was the same type fridge from the same delivery company, therefore, the Tenant refused to accept the fridge.

The Landlord's Agents stated that they have been charged for the deliver fee of both fridges and felt that it would be reasonable that the Tenant pay for the second delivery charge as a result of her refusing the exchange the second time for no good reason. The Landlord's Agents stated that once the Tenant submitted her Application for monetary compensation, the Landlord decided to serve the One Month Notice.

For the above-mentioned reasons, the Landlord's Agents stated that they served the Tenant with the One Month Notice on November 25, 2020 with an effective vacancy date of December 30, 2020 by posting it to the Tenant's door. The Tenant confirmed having received the One Month Notice. The Landlord's reasons for ending the tenancy on the One Month Notice is;

The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Tenant has made an Application to cancel the One Month Notice. The Tenant stated that she has been dealing with a faulty fridge throughout her tenancy and that the Landlord has sent unqualified maintenance persons to inspect the fridge. While the parties agreed on the return of the first replacement fridge offered, the Tenant stated that the second fridge was deliver to her Saturday evening without notice and while she was not feeling well. As such, the Tenant stated that the second fridge was also returned.

The Tenant stated that she has ordered a new fridge on her own, however, it is not due to be deliver to her until February 2021. In the meantime, the Tenant stated that she is making do with the same faulty fridge that she has had throughout her tenancy.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on November 25, 2020 with an effective vacancy date of December 30, 2020.

The Tenant confirmed having received the notice. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I accept that the Tenant has expressed her displeasure with the fridge that was provided to her at the start of the tenancy. I accept that the Landlord has made attempts to repair the fridge and eventually attempts to replace the fridge. I accept that the replacement of the fridge has resulted in some miscommunication and frustration between the parties.

I find that the Landlord provided insufficient evidence to demonstrate that the Tenant's communications surrounding the fridge has significantly interfered with or unreasonably disturbed another occupant or the Landlord, to the extent that the tenancy should end. If the parties are in a disagreement over financial compensation owed, they are at liberty to reapply for a monetary order.

In light of the above, I cancel the One Month Notice, dated November 25, 2020. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated November 25, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

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 18, 2021

Residential Tenancy Branch