



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CML Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, LAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

CM ("landlord") appeared as the primary agent on behalf of the landlord in this hearing. 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 landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each others' evidentiary materials.

The tenant confirmed receipt of the 1 Month Notice dated October 26, 2020, which was served to the tenant by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on October 31, 2020, 5 days after mailing.

Issues(s) to be Decided

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

Is the tenant entitled to a monetary order for compensation for loss or money owed under the Act, regulation or tenancy agreement?

Is the tenant entitled to an order allowing the tenant to change the locks?

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 this application and my findings around it are set out below

This month-to-month tenancy began on August 1, 2018, with monthly rent set at \$800.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$400.00, which they still hold.

The landlord served the notice to end tenancy dated October 26, 2020 providing the following grounds:

1. The tenant is repeatedly late paying rent.
2. Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord provided the following reason for the issuance of this 1 Month Notice. Both parties confirmed that the tenant had been previously served with two 1 Month Notices to End Tenancy, both of which were cancelled after previous arbitration hearings. On May 21, 2020 following a hearing that was held on the same date, the Arbitrator made the following order

I ORDER the TENANT to: ensure the full amount of rent is paid on or before the first day of every month from this date forward. For added certainty: This order applies regardless of the tenant's financial situation, whether the first day of the month falls on a holiday or other day the bank is closed, or any other circumstance.

I FURTHER AUTHORIZE that if the tenant fails to comply with my order above, even if it is only one more late payment, the landlord may issue another 1 Month Notice to End Tenancy for Cause to the tenant citing the following reason:

“Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order”.

The landlord served the tenant with a new 1 Month Notice citing the above reason on July 6, 2020. The landlord's application for an Order of Possession was dismissed on October 14, 2020 following the October 13, 2020 hearing as the Arbitrator found that the tenant was deemed served with the order on July 10, 2020, and that the 1 Month Notice was issued prior to the 30 days after the tenant was deemed served with the Order.

On October 26, 2020, the landlord served the tenant with a new 1 Month Notice as the tenant as late paying his September 2020 rent. The tenant does not dispute that he had paid the September 2020 rent on September 8, 2020, but felt that he had a legitimate reason. The tenant testified that he was having issues receiving the rental subsidy from the government, and after discussing this issue with the landlord, the landlord had verbally agreed to accept his late rent payment.

The landlord responded that the tenant did not have permission to make this late rent payment, and was requesting an Order of Possession on this basis. Both parties confirmed that the tenant was currently on a repayment plan for the affected rent up to August 2020. The tenant's advocate requested in the hearing that if an Order of Possession was granted, that the Order be dated for February 28, 2021 in order to give the tenant more time to make arrangements to move. The landlord stated in the hearing that they would not consent to an extension given the history of issues in this tenancy.

The tenant also requested a monetary order for compensation in the amount of \$7,000.00. The tenant feels that the landlord and their agents have been very rude and unprofessional towards him. The tenant testified that the caretaker had removed his laundry from the dryer without his permission, and have made false accusations against him. The tenant testified that he felt that someone had entered his rental unit without his permission, and he had discovered the caretaker with his ear to his door of his suite.

The landlord disputes the tenant's allegations, stating that the police have attended the rental unit on at least 23 occasions.

Analysis

Section 46 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. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

In consideration of the evidence before me, I find that an order was made by an Arbitrator on May 21, 2020 for the tenant to pay his rent on or before the first day of the month, when the monthly rent is due. I find that the tenant was deemed to have been served this order on July 10, 2020. I find that the tenant paid his September 2020 rent on September 8, 2020 despite the fact that the rent was due on September 1, 2020. Although the tenant provided an explanation for why he had paid his rent late, and despite his testimony that the landlord had verbally agreed to allow this payment of rent, I find that the tenant failed to provide sufficient evidence to support that he had the permission of the landlord to make this late rent payment. I find that this late rent payment constitutes a non-compliance of the order made by the Arbitrator on May 21, 2020. I find that this non-compliance was within the applicable time-frame required by the *Act*. Accordingly, I find this late rent payment meets the criteria for sufficient cause to end this tenancy under section 47(1)(l) of the *Act*. Therefore, I am dismissing the tenant's application to cancel the 1 Month Notice dated October 26, 2020 without leave to reapply.

Section 55(1) of the *Act* reads as follows:

- 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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with 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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, November 30, 2020. The tenant's advocate requested that in the case an Order of Possession was granted, that the Order be given for February 28, 2021, which the landlord opposed. In light of the testimony and evidence before me, I find that the landlord had served this 1 Month Notice in October 2020, and it would be prejudicial to the landlord for them to wait a further month for the tenancy to end. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The tenant also made a monetary claim in the amount of \$7,000.00 for "many breaches of the *Act* and regulation".

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement

3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In assessing this claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I have considered the testimony and evidence of both parties, and although I acknowledge the concerns raised by the tenant in regard to this tenancy, I find that the evidence presented by the tenant does not sufficiently support the tenant's allegations of harassment or breaches by the landlord or their agents. Furthermore, although the tenant requested compensation, I find that he failed to support how the tenant had calculated the amount of loss claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damage or losses the tenant is seeking in this application. Furthermore, I find that the tenant failed to establish how his suffering was due to the deliberate or negligent act or omission of the landlord. On this basis I dismiss the tenant's monetary claim without leave to reapply.

Similarly, I do not find that the tenant had provided sufficient evidence to support that the landlord or their agents have entered his rental unit without his permission or knowledge. On this basis, I dismiss the tenant's application to change to locks without leave to reapply.

Conclusion

I dismiss the tenant's entire application without leave to reapply. 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. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 27, 2021

Residential Tenancy Branch