



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNC MNDC OLC FF
Landlord: OPC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 5, 2021.

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant's application and Notice of Hearing and did not take issue with the service of those documents. I find the Tenant sufficiently served his application and Notice of Hearing for the purposes of this proceeding. The Tenant did not submit any documentary evidence.

The Tenant confirmed receipt of the Landlord's Notice of Hearing package and did not take issue with the service of that document. I find the Landlord sufficiently served his Notice of Hearing. However, I find he failed to sufficiently serve his evidence, for the following reasons. The Landlord stated he put all of his evidence on a USB stick, and hand delivered it to the Tenant sometime in mid-December. However, the Tenant was unable to open the documents, and the Landlord specifically stated that he did not confirm with the Tenant that he could access the files. In fact, the Landlord stated it is "not his responsibility" to ensure the Tenant could access the files on his USB stick. However, I turn to the following Rule of Procedure:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

I find the Landlord failed to serve his digital evidence in accordance with the Rules of Procedure. The Landlord should have taken steps to ensure and confirm his digital evidence was accessible. I find the Landlord's digital evidence is not admissible, as it was not properly served in accordance with the Rules of Procedure (3.10.5). I will not address the Landlord's evidence any further, and I will only consider testimony provided at the hearing.

Both parties were provided the 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.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on both applications with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

Further, since the Landlord’s application for an order of possession based on this Notice is related, it will also be considered in this decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord’s Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on September 30, 2020. The Notice indicates the following reasons for ending the tenancy on the second page:

Tenant or a person permitted on the property by the Tenant has:

- *seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
- *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:

- *damage the Landlord's property.*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*

Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

Under the "Details of Cause" section, the landlord specified that there is a severe odour and suspicion of drug use in the rental suite. The Landlord noted that the Tenant has failed to clean up his messy rental unit, and there is concern rodents will damage the rental unit if the mess isn't cleaned up. The Landlord also pointed out that his daughter has a respiratory condition which may be exacerbated by the smell of the garbage and drug odour from the suite.

In the hearing, the Landlord explained that his main concerns are relating to the odour and the foul smell which he believes are emanating from the rental unit. The Landlord also explained that he is concerned that the garbage in the rental unit will continue to attract rodents, which have the ability to destroy wiring and plumbing. The Landlord also explained he is concerned that the smells will negatively impact the health and safety of all people in the building, including his daughter who has a medical condition.

The Landlord explained that he had to enter the rental unit in August of 2020, to check on smoke alarms in the building that were going off. The Landlord stated that this is when he took the photos, and the videos, and when he saw the extent of the mess in the rental unit. The Landlord stated he saw mouse droppings, lots of garbage, and debris all over the floors. The Landlord also stated he noticed a strong smell inside the rental unit, which was not present elsewhere in the building. The Landlord explained that he lives upstairs with his family, and there are two separate rental units in the basement, one of which this tenant occupies.

The Landlord stated his daughter has a chronic respiratory condition, which makes her sensitive to air quality issues. The Landlord feels some of the smell is penetrating the interior walls of the house. The Landlord did not directly speak to or provide evidence to show his daughter has suffered any degradation in her condition directly as a result of air quality in the house, or from the rental suite. The Landlord stated he has given the Tenant ample time to clean up the stray debris, but it is still messy, and there is still a smell coming from the unit. The Landlord also stated that the Tenant has been difficult and has prevented him from bringing in an exterminator to deal with the rodents. The Landlord was not clear on what dates this occurred, or if it occurred more than once.

The Landlord also noted that when he entered the unit in August 2020, to check on the smoke alarm (which turned out to be coming from the other unit), he noted that the

Tenant had removed his smoke alarm. The Landlord stated he worries the Tenant is smoking hard drugs in the basement, but acknowledged he had no proof that this has happened.

The Tenant specifically denied that he has ever smoked any drugs in the rental unit. The Tenant stated that his smoke alarm started “chirping” constantly in July 2020, and he stated that he told the Landlord about this issue right away. The Tenant stated that the Landlord was aware the alarm was making noise, but did not come and fix it. The Landlord denies being told the alarm was chirping. The Tenant did not provide any evidence to support that he told the Landlord about the issue with the smoke alarm. The Tenant stated he removed the alarm because it would not stop making beeping noises, and that this was due to the alarm being at its end of life. The Tenant stated that the Landlord told him it was okay to remove the alarm if it was making constant noises.

The Tenant also acknowledged that his rental unit is not tidy. However, he stated all of the debris is non-perishable, such as discarded shopping bags, and there is no food products or things that would attract rodents. The Tenant stated that there are many rodents in the neighbourhood, and it is not a result of anything he has done. The Tenant stated that he is rarely home, and hasn’t had the time to tidy up. The Tenant stated that the smell is not coming from his unit, or from anything he has done. The Tenant believes that the smell is related to cat urine from a previous tenant.

The Landlord again reiterated that his main concern is the smell and odour, and the Tenants living beside him have complained.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on September 30, 2020.

After reviewing the Notice, I note that it lists multiple grounds for ending the tenancy, as above. The Landlord spoke about his issues with the Tenant, generally, but did not specify how each of the issues relates to the grounds he selected on the Notice.

However, I will analyze each of the issues identified by the Landlord to determine if they meet any of the “causes” indicated on the Notice.

The Landlord identified the following issues 1) smell/odour 2) garbage in suite 3) suspicion of drug use 4) fear of rodent damage caused by Tenant’s mess 5) removal of smoke alarm. The Landlord appears concerned that the smell and mess is creating a health hazard for other occupants of the building, including his daughter who lives upstairs with a respiratory condition.

First, I find it important to note that the Landlord has no admissible documentary evidence to substantiate or corroborate any of the above allegations. Although the Tenant acknowledges his rental unit is not very tidy, he denies that any mess is such that it would attract rodents, cause a foul smell, or that it would cause any sort of health concern. Without admissible documentary evidence showing the state of the rental unit, it is difficult to determine the nature and extent of the mess, and whether or not this mess would be such that it would sufficiently support and end to the tenancy based on any of the grounds/causes selected on the Notice.

The Tenant denies that there are any food items causing a smell, and believes the smells noted by the Landlord are related to causes beyond his control and/or from previous Tenant’s pets. Although the Landlord strongly feels the smell is coming from the Tenant’s messy rental unit, he has not provided sufficient evidence to support this. Further, there is no evidence to show the Tenant has been smoking any hard drugs in his rental unit, as the Landlord has suggested.

There is insufficient evidence to show why the smoke alarm was removed, and whether or not this was done for legitimate purposes (alarm making noises due to being at end of life) or to more easily conceal alleged drug use in the unit. The Landlord stated the Tenant removed it without permission, but the Tenant stated he informed the Landlord of the problem and was given permission to removed it because of the constant noise it was emitting due to being at end of life. Although the parties spoke to text message conversations on this matter, neither party provided copies of this conversation history. Without further evidence on the smoke alarm issue, including what was or was not discussed leading up to its removal, I find there is insufficient evidence to demonstrate it warrants an end to the tenancy on any of the selected grounds.

The Landlord has also suggested that the Tenant's mess is jeopardizing the health of other occupants in the building. However, there is insufficient evidence showing what the extent of the mess is, what those impacts are, and whether or not they are directly related to conduct of the Tenant. Again, without further documentary evidence from the Landlord, I am not satisfied the Landlord has sufficiently proven this allegation. Further, I do not find there is sufficient evidence to show there is an issue with mice, or that it is the Tenant's fault. Ultimately, I find the Landlord has failed to provide sufficient documentary evidence to support any of the grounds/causes he selected on the Notice.

Overall, I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy under the Notice he issued; therefore, the Tenant's application is successful and the Notice received by the Tenant on September 30, 2020, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

I note the Tenant stated he has been busy and hasn't had a lot of time to do cleaning, which is why some mess has accumulated. However, the Tenant should be aware, going forward, that a continued accumulation of debris and lack of cleaning could lead to a breach of section 32(2) of the *Act*, which reads as follows:

Landlord and tenant obligations to repair and maintain

32 (2)*A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

Although there is insufficient documentary evidence at this time to demonstrate that any mess within the rental unit breaches this section of the *Act* or that it is such that it warrants an end to the tenancy under the grounds indicated on the Notice, it should be noted that further issues or Notice's to End Tenancy may arise if the above standard is not maintained, going forward.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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 6, 2021

Residential Tenancy Branch