Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes FFT, CNC, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 27, 2020 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated November 19, 2020 (the "Notice").
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.
- For reimbursement for the filing fee.

The Tenant appeared at the hearing with M.W., his mother, and the Advocate. H.W. and B.R. appeared at the hearing as representatives for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

H.W. confirmed the correct Landlord name which is reflected in the style of cause.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I advised the Tenant at the outset that I would consider the dispute of the Notice and dismiss the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement as it is not sufficiently related to the dispute of the Notice. The request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "*Act*").

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started February 01, 2018 and is a month-to-month tenancy. Rent is due on the last day of each month.

The Notice was submitted as evidence. The grounds for the Notice are:

1. 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 and put the Landlord's property at significant risk.

2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause state:

1. Condition of unit during October 26 inspection by landlord did not comply with RTB sec 32(2) and immediate notice is given for follow-up inspection to take place November 9
2. Expectations for the follow-up inspection outlined and given to tenant in writing October 28
3. Tenant refused to allow landlord entry on November 9
4. After the refused entry on November 9, tenant is given written notice of safety concerns for the building and a reminder of seriousness of matters listed as

outstanding in the October 28 notice to tenant. Notice is also given tenant that a follow-up inspection to take place November 17.

5. Tenant refused to allow landlord entry on November 17
6. After the refused entry on November 17, tenant is given written notice of next inspection to take place November 19 and purpose of inspection is given.
7. Tenant refused to allow landlord entry on November 19.

There was no issue that the Notice was posted to the door of the rental unit November 19, 2020 and received by the Tenant the same day.

H.W. advised at the outset that the basis for the Notice is the Tenant denying entry to the rental unit and not the condition of the rental unit.

H.W. testified as follows in relation to the grounds for the Notice. The Landlord's biggest concern was safety issues because they could not enter the rental unit after the unsatisfactory inspection on October 26th and they had no information as to whether the rental unit was safe. The rental unit did not comply with section 32(2) of the *Act* during the October 26th inspection. The Landlord needed access to the rental unit and were denied access. The Tenant denied access through notes to the Landlord.

H.W. relied on the October 28th letter in evidence to support his position about the condition of the rental unit during the October 26th inspection.

H.W. submitted that there are "red flags" when looking at the photos of the rental unit submitted by the Tenant including an extension cord, clutter in cupboards and gas containers. In relation to the extension cord, H.W. stated that he does not know if it is hooked up to Christmas lights or a heater which would be a very serious hazard. In relation to the gas containers, H.W. said he presumes these are empty but they raise a red flag as to what is in the Tenant's mind if he cherishes empty gas containers and that he does not know about "fantasies or hallucinations involving fire". H.W. also testified about an incident when the Tenant had an uncontrolled fire in his BBQ.

B.R. testified as follows. The Landlord inspected the rental unit on October 26th and gave the Tenant a list of things that had to be improved. The Landlord gave the Tenant a good amount of time and planned to inspect the rental unit to see if the Tenant had made the improvements. There are excess belongings in the rental unit. The Tenant has painted the walls and ceilings in violation of the tenancy agreement. The Tenant has plastered the walls with Christmas wrapping paper. The Landlord is concerned because they could not go into the rental unit to do a further inspection. The Tenant

has his BBQ up against the outside of the building and once had a box of baking soda on top of it with a mess all over the BBQ and ground. The Tenant commented that the BBQ had overheated. The Tenant could have burned the building down. The Landlord is concerned about the Tenant's fire safety and this is an issue because of the amount of belongings in the rental unit.

It was clear from the materials that an issue between the parties is when and how often the Landlord is permitted to access the rental unit. I asked H.W. for his position on this. H.W. submitted that the wording in the *Act* is "once per month" and that the Landlord entered the rental unit in October and needed to again in November. H.W. submitted that access does not have to be 30 days apart, it just has to be once per month. H.W. submitted that there is nothing in the *Act* that requires access to be 30 days apart.

The Advocate made the following submissions. The Landlord is only permitted to access the rental unit every 30 days as stated in section 29(1)(a) of the *Act*. Section 29(1)(a) applies to access even when a tenant does not give permission to access the rental unit. The term "monthly" means there must be a month in between access and the Landlord cannot access the rental unit October 31st and again November 1st. The Tenant denied entry because the Landlord was not permitted to enter when they sought to do so. The Tenant acknowledges he should not have denied entry on November 28th but there was some confusion about the 30-day requirement and health orders. The Tenant obtained clarification on this and realised his mistake. The Tenant allowed the Landlord access November 5th to do repairs. The Tenant allowed the Landlord access in January when there was a leak. The Tenant feels that the Landlord is breaching his right to quiet enjoyment with continued inspections and notices from October to the end of November. In the previous RTB decision, the Arbitrator found hoarding and the amount of belongings in the rental unit were not a serious concern. The Landlord did not issue rent receipts for "use and occupancy only" and therefore waived the Notice.

In relation to the position that the Notice was waived, I asked the Advocate if the Tenant understood that the Landlord continued to seek to uphold the Notice and the Tenant answered "yes".

The Tenant submitted photos of the rental unit and M.W. testified that these are from the end of November.

The Tenant testified as follows. He has the gas containers because he is a tin collector. There has never been gas in the containers. The extension cord in the photos is connected to the Christmas trees. He was supposed to get a storage unit in the

building which would have held some of the belongings in the rental unit. There was never an uncontrolled fire in the BBQ.

The Landlord submitted the following relevant documentary evidence:

- Inspection Results
- Notes from the Tenant denying access
- Letters to the Tenant about inspections being refused
- Inspection Notice
- Excerpts from board meetings
- Three photos
- Documentation about a tub drain blockage
- Documentation about repairs to a toilet
- An email from B.R. to H.W. about a leak
- An invoice for repairs related to a leaking pipe

The Tenant submitted the following relevant documentary evidence:

- Fire inspection report
- Letters from the Landlord to the Tenant
- Prior RTB decision
- Inspection Notices
- Inspection Results
- Letters to the Tenant about inspections being refused
- Photos of the rental unit

Analysis

I do not accept that the Notice was waived by the Landlord given the Tenant acknowledged understanding that the Landlord continued to seek to uphold the Notice.

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

> 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…

(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…

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so…

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice November 19, 2020. The Application was filed November 27, 2020, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Given the Details of Cause, I have considered the Notice based on the rental unit not complying with section 32(2) of the *Act* during the October 26th inspection and the Tenant refusing entry November 09th, November 17th and November 19th.

1. 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 and put the Landlord's property at significant risk.

Condition of Rental Unit October 26th

Section 32(2) of the *Act* states:

(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.

Policy Guideline 1 deals with landlord and tenant responsibilities and states at page one:

> An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, **which are not necessarily the standards of the arbitrator, the landlord or the tenant.** (emphasis added)

I am not satisfied based on the evidence provided that the condition of the rental unit did not comply with section 32(2) of the *Act* during the October 26th inspection.

I do not find the Representatives' written or verbal assertions about the condition of the rental unit sufficient because I found they made assumptions and unfounded assertions about the Tenant and rental unit during the hearing. For example, H.W. asserted that the Tenant's use of an extension cord was a "red flag" despite not knowing what it was being used for. H.W. speculated that the extension cord could be used for a heater despite there being no evidence that this is the case. Further, H.W. talked about gas containers being red flags when it is quite clear that they are decorative. H.W. talked about the Tenant possibly having "fantasies or hallucinations involving fire" despite acknowledging that he does not know if this is an issue. There is no evidence before me that the Tenant has fantasies or hallucinations involving fire. B.R. asserted that the Tenant could have burned the building down based on a comment from the Tenant that his BBQ overheated and observing baking soda. B.R. did not observe a fire or the incident that lead to the baking soda mess.

In the circumstances, I would expect to see further evidence of the condition of the rental unit October 26th, such as photos. The Landlord did not submit photos of the rental unit from October 26th.

The Tenant did submit photos of the rental unit from November. The photos do not show serious health, cleanliness or sanitary issues. Nor do the photos show that there are so many belongings in the rental unit that this poses some risk to the rental unit, other occupants or the Landlord.

In the circumstances, I am not satisfied the condition of the rental unit on October 26th was such that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord or put the Landlord's property at significant risk.

I am not satisfied the Notice is valid on this ground.

Tenant Refusing Entry

Section 29 of the *Act* sets out a landlord's right to enter a rental unit and states:

> 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
>
> (d) the landlord has an order of the director authorizing the entry;
>
> (e) the tenant has abandoned the rental unit;
>
> (f) an emergency exists and the entry is necessary to protect life or property.
>
> (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Policy Guideline 7 deals with locks and access and states:

> At common law, the tenant has a right to quiet enjoyment and peaceful occupation of the premises. At the same time, the landlord has the right to enter under certain conditions. The Residential Tenancy Act (the Act) addresses the rights and obligations of landlords and tenants with respect to entry into a rental unit...

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry…

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly.

The parties disagree about what "monthly" means. The Landlord's position is that the Landlord can inspect the rental unit once per month and that the inspections do not have to be 30 days apart. The Tenant's position is that the Landlord can only conduct inspections at least 30 days apart.

I find that "monthly" in section 29(2) of the *Act* means that the Landlord can inspect the rental unit once per month and that such inspections do not have to be 30 days apart for the following reasons. The dictionary definition of "monthly" is "once a month" or "by the month". I find "once a month" means just that, once per calendar month and not once every 30 days. Section 29(1)(a) of the *Act* does not apply as it relates to entry when a tenant gives permission which is not the situation here. Further, section 29(1)(a) means a landlord cannot rely on a tenant's permission to enter if it was given more than 30

days before entry. This is not relevant to these circumstances. However, I do find it relevant that the term “30 days” is used in both sections 29(1)(a) and (b) as I find this indicates that section 29(2) means something other than every 30 days. To read in a requirement of every 30 days in section 29(2) of the *Act* would be to import a requirement that is not there. If the intention was that landlords could only inspect 30 days apart, the section would state this.

I note that the above finding is also reflected on the RTB website which states:

> Landlord Right to Enter
>
> A landlord may enter:
>
> - Any common areas that are shared with others like hallways, courtyards and laundry facilities – no notice is required
> - The rental unit **once per month to inspect the condition of the property** – proper notice to tenants is required
> - The rental unit to complete repairs or maintenance – proper notice to tenants is required
> - To show the property to prospective buyers or tenants – proper notice to tenants is required
>
> The tenant doesn’t need to be present for the landlord to enter as long as proper notice was provided.
>
> (emphasis added)

I am satisfied section 29(2) of the *Act* means the Landlord can inspect the rental unit once per month in accordance with subsection 29(1)(b) of the *Act*. I do not accept that the section requires the inspections to be 30 days apart. I find that the section means the Landlord can inspect the unit once in October, once in November, once in December and so on.

However, I am not satisfied that the Tenant denying entry on November 9th, November 17th and November 19th after the October 26th inspection gave the Landlord grounds to issue the Notice in these particular circumstances for the following reasons.

I am satisfied the Tenant thought the Landlord could not enter the rental unit until 30 days after the October 26th inspection pursuant to section 29 of the *Act*. This is clear

from the Tenant's notes in evidence. Although a misunderstanding about rights and obligations under the *Act* will not usually relieve the Tenant of his rights and obligations, I am satisfied that the issue here was an interpretation issue and not a situation where the Tenant simply did not know his rights and obligations.

Further, I am not satisfied based on the evidence provided that the Tenant denying access for the inspections 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 for two reasons. First, I am not satisfied there was a serious issue in the rental unit that required immediate inspections. Second, I am satisfied the Tenant allowed the Landlord access for repairs and a leak.

In the circumstances, I am not satisfied the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord or put the Landlord's property at significant risk by denying access.

I am not satisfied the Notice is valid on this ground.

Having said the above, I note two things. First, the Landlord can enter the rental unit with proper notice pursuant to section 29(1)(b) of the *Act.* I do not accept that section 29(2) of the *Act* is a limit on when the Landlord can enter. I find section 29(2) of the *Act* is simply clarifying that inspecting a rental unit monthly is reasonable. Second, if the Tenant continues to deny entry without authority to do so, the Landlord can issue another notice pursuant to section 47 of the *Act*.

2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Policy Guideline 8 deals with material terms in a tenancy agreement and states:

> A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
>
> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.
>
> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
>
> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I am not satisfied the Landlord has proven this ground for the following reasons. The Representatives for the Landlord did not advise of what term in the tenancy agreement the Landlord says was breached or why the term is a material term. Nor were these points addressed in the Landlord's written materials. Further, there is no breach letter in the materials, and I am not satisfied the Landlord provided a breach letter to the Tenant in relation to the issues raised.

I do not find the Notice is valid based on this ground.

In the circumstances, I am not satisfied the Landlord has established grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)

of the *Act*, the Tenant is permitted to deduct $100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is awarded reimbursement for the $100.00 filing fee. The Tenant is permitted to deduct $100.00 from one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 25, 2021

Residential Tenancy Branch