Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, OPC, FFL

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 1 Month Notice pursuant to section 47; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant PS (the tenant) confirmed that they had full authority to act on behalf of the other tenant, their 93-year old mother.

Preliminary Matters- Service of Documents

The tenant confirmed that they were handed the 1 Month Notice by one of the landlord's representatives on November 27, 2020, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As Landlord Representative EM (the landlord) confirmed that the tenant handed a landlord representative a copy of the tenants' dispute resolution hearing package on December 15, 2020, I find that the landlord was duly served with the tenant's dispute resolution hearing package in accordance with section 89 of the *Act*. As the tenant confirmed that the tenants received copies of the landlord's dispute resolution hearing package sent to both tenants by the landlord by registered mail on December 18, 2020, I find that the tenants

were duly served with the landlord's dispute resolution hearing package in accordance with section 89 of the *Act.*

The tenant confirmed receipt of the landlord's written and photographic evidence, sent by the landlord by registered mail on February 12, 2021. During the hearing, the landlord referenced photographs that were not included in the package submitted to the Residential Tenancy Branch (the RTB). I advised the parties that I would only be considering photographs 1-13, the only photographs the landlord submitted to the RTB. I find photographs 1-13 and the landlord's written evidence were duly served to the tenant in accordance with section 88 of the *Act*. During the hearing, the tenant questioned photograph 10. The landlord testified that photographs 9, 10 and 11 were not of the tenant's rental premises or associated yard, but were of another unit. They said that these photographs were included to demonstrate the care taken by the landlord to ensure that rental units in the landlord's rental portfolio are kept free of fire risks and remain safe. I advised the parties that I would not be considering photographs 9, 10 and 11, as they were not of the tenants' rental premises and had little relevance to the applications before me.

The tenant testified that they had encountered difficulties in scanning and submitting their photographic evidence to the landlord. They said that they sent their photographs to one of the landlord's representatives the night before this hearing. The landlord checked one of these emails and discovered that they were sent late on the night before the hearing and early on the morning of the hearing. The landlord's representatives had not seen these photographs. The tenant also said that these photographs were taken in late February 2021, two months after the landlord issued the 1 Month Notice. I advised the parties that I would not be considering this photographic evidence as it was served to the landlord shortly before this hearing and has little relevance to the condition of the rental premises as it existed at the time of the issuance of the 1 Month Notice. The tenant did not provide any other written or photographic evidence for consideration at this hearing.

Although the landlord had a witness available who the landlord claimed was on the site and would provide sworn testimony as to the current condition of the yard and would attest to the presence of multiple inoperable vehicles there, there seemed little need to include that witness in this hearing. The tenant did not dispute that the yard needed "tidying up" or that there were four vehicles presently stored on the site, essentially the testimony that the landlord said the witness would be providing if called as a witness.
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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? Should any other orders be issued with respect to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On September 17, 2005, the tenant's late father and the landlord entered into a six-month fixed term Residential Tenancy Agreement (the Agreement) that enabled the tenant and his parents, including the other tenant listed on these applications, to take occupancy of this townhouse in a 66-unit complex on October 1, 2005. The landlord said that this townhouse is the end unit of a four-unit cluster within this complex. This Agreement converted to a month-to-month tenancy upon the expiration of the original term. Monthly rent was originally set at $1,450.00, payable in advance on the first of each month. The parties agreed that the current monthly rent is $1,877.00. They also agreed that the landlord continues to hold the tenants' $725.00 security deposit paid when this tenancy began in 2005.

The parties confirmed that the tenants pay rent by pre-authorized cheques, and that payments have been received by the landlord for rent for January, February and March 2021. The tenant said that they were aware that the landlord's acceptance of these payments was not intended to prolong this tenancy, but were accepted by the landlord until the outcome of this hearing was known.

The landlord's 1 Month Notice seeking an end to this tenancy by December 31, 2020, identified the following reasons for ending this tenancy:

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

- *put the landlord's property at significant risk.*

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

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

The landlord provided photographic evidence and sworn testimony in support of their assertion that the tenant has not complied with warning letters handed to the tenant on October 27, 2020 and November 23, 2020.

The warning of letter of October 27, 2020 outlined the following items that the landlord needed to be addressed by tenants in order to avoid issuing a 1 Month Notice:

Upon an inspection of the backyard, front yard and side of your townhouse must be cleaned up immediately as you made a huge mess on the property.

The garage has to be cleaned up as well. All debris and fire hazard stuff have to be recycled or removed in proper way.

After all the verbal warnings you have received, as a landlord I am informing you that you now have one week in which to clean all areas mentioned above.

We will be returning for re-inspection on November 3, 2020.

In the situation if you do not take the necessary action we have no alternative but to serve you one month eviction notice.

These letters advised the tenant that unless they took action to remove cluttered items, materials and vehicles from the rental property, they would be issuing a 1 Month Notice to end this tenancy for cause. The landlord testified that these items were not removed and the premises were not brought up to a safe and reasonable standard by the time stated on the warning letters. The landlord said that even after issuing another letter on February 21, 2021, the premises were not brought up to a safe and reasonable standard by the tenant.

The landlord gave undisputed sworn testimony that issues of cluttering have persisted during much of this tenancy, but when the tenant's father was alive, they were generally addressed to an acceptable standard. The landlord maintained that since the tenant's father passed away, the tenant has over time acquired many items and possessions that present a fire risk and present danger to this multi-family complex.

The landlord also gave undisputed sworn testimony that the same issues of cluttering and hoarding of materials were identified in November 2019, at which time another Arbitrator appointed pursuant to the *Act* considered the landlord's attempt at that time to end this tenancy for cause (see reference above). The landlord said that on that occasion, they were willing to reach a settlement agreement whereby the tenant committed to take action within five days to bring the premises into an acceptable state of repair.

Over time, the landlord said that the tenant has stored increasing items in the yard and garage. The landlord said that when the 1 Month Notice was issued that there were as many as five uninsured vehicles that the tenant had brought onto the premises that are in various states of repair or damage. The tenant testified that there are now only four vehicles on the premises and that they are insured for storage purposes.

The landlord entered into written evidence copies of the relevant portions of the Agreement, which include provisions in Section 16 which restrict the use of the premises

AUTOMOBILE AND OTHER REPAIRS SHALL NOT BE DONE IN PARKING AREAS or on Landlord's Property

The landlord gave undisputed sworn testimony that prior to the COVID-19 pandemic, the landlord's practice was to conduct inspections of all parts of a rental unit every three months. The landlord said that in the past on almost every occasion when access was gained to the rental unit that the landlord's representatives expressed concerns about the amount of clutter and the need for materials to be kept in an orderly fashion. On some of these occasions, those residing in the rental unit ensured that materials were removed and organized in a way that accommodated the landlord's concerns. However, on almost every occasion, more material was brought to the rental premises and similar concerns were expressed upon subsequent inspections.

Since the onset of the COVID-19 pandemic, the tenant has refused to allow anyone to enter the rental premises, out of concern for the health of his aged mother. The landlord said that the tenant has steadfastly refused to allow the landlord's representatives to inspect the garage, where a great deal of material has been stored, including a dilapidated car. The landlord said that on some occasions the contents of the garage became visible when the tenant left the garage door open and the sheer volume of the material stored there was considerable. The landlord submitted a photo showing the front portion of this garage when the tenant had left the door open.

Since issuing the 1 Month Notice, the landlord gave undisputed sworn testimony that the tenant has refused requests to enter the rental unit to inspect the premises. The landlord said that the tenant advised them that their mother's doctor was willing to issue a note in which they counselled against anyone entering the rental unit as doing so would compromise the health of the tenant's ill mother. The landlord said that no such note has ever been provided to the landlord by the tenant. The landlord said that they were sympathetic to any health related concerns and that they offered to have masked

representatives inspect the inside of the rental unit, but with no contact with the tenant's mother who could remain in her room. The landlord gave undisputed sworn testimony that the tenant has refused requests to access the inside of the rental premises and the garage.

The landlord maintained that they have tried many times to resolve this issue with the tenant, but that the tenant continues to keep the premises in such a cluttered and dangerous state that it presents a risk to the property and to others. The landlord's other representatives at this hearing supported the landlord's sworn testimony as to the landlord's history of dealing with this tenancy.

The tenant disagreed with much of the landlord's testimony, claiming that the landlord had exaggerated the condition of the rental premises and the extent of the problem presented by the items stored on the premises by the tenant. The tenant said that the landlord's representatives have been inside the rental unit many times during this tenancy and that on each occasion the tenants have taken sufficient action to satisfy the landlord's concerns. The tenant claimed that the premises are clean. The tenant made specific reference to the oven range that he said was "spotless", despite its age. The tenant said that the interior of the rental unit is "very presentable." He did admit on a number of occasions that the premises needed "to be tidied further" and that "the clutter needs to be thinned out," but that no matter how much work he does to accommodate the landlord's concerns that this never seems to be enough to satisfy the landlord.

The tenant maintained that the urgency of this matter escalated when there was a fire in one of the other areas of rented space in this complex. The tenant asserted that the landlord reacted to this fire in a state of "panic" and has overreacted to the safety concern presented by the tenant's storage of materials that the tenant believes remain safe and without significant risk to the landlords' property. The tenant said that there is nothing flammable or hazardous within the garage and that the garage itself is constructed of wood, so is itself a fire risk. The tenant also alleged that they had spoken with the municipality and that nothing that they have done to the property or stored there presents a safety or health risk.

The tenant also observed that they were given little time to address the concerns raised by the landlord in their warning letters. The tenant said that when the Landlord's Representative LV attended the premises in November 2020, prior to the issuance of the 1 Month Notice, they told him that they would get back to him within 48 hours if there was a problem and if additional work needed to be done. Landlord

Representative LV denied that they gave the tenant any such 48 hour time frame for following up with the tenant.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Section 47 of the *Act* reads in part as follows:

> ***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*
> >
> > *(iii) put the landlord's property at significant risk;*
> >
> > *(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;*
> >
> > *(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.*

If the landlord can demonstrate on a balance of probabilities that any of the above three reasons identified in the landlord's 1 Month Notice were in effect then the landlord may end the tenancy for cause in accordance with section 47 of the *Act.*

Section 32(3) reads in part as follows:

> *A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

In this case, the parties dispute the extent to which the condition of the rental unit as it existed at the time of the issuance of the 1 Month Notice, and for that matter as it exists now, presents on the balance of probabilities sufficient reason to end this tenancy for cause.

While the landlord provided many photographs of the condition of the rental unit, the tenant did not provide any photographs to confirm his assertion that they have kept the rental premises "very presentable." The tenant could have taken photographs of the inside of the rental unit and the garage, but did not do so. They only submitted photographs of the yard two months after the 1 Month Notice was issued, and did not serve even these photographs to the landlord until the night before this hearing. The tenant did not produce any witnesses who could attest to the condition of the rental unit, the garage or the yard surrounding the rental unit used by the tenant to store various items. Even if the tenant has legitimate reasons for restricting the landlord's access to the rental unit, this cannot be used as justification to deny access to the tenant's garage. Although the current COVID-19 pandemic does present legitimate issues about granting access to a rental unit occupied by an elderly parent who is ill, I find that the tenant has provided little other than his own testimony to support his claim that the inside of the rental unit and the garage have been maintained in an acceptable condition.

While the tenant's actions may or may not constitute an actual breach of their Agreement, I find that the photographs of the rental unit, and in particular the vehicles stored on the rental property and in the garage, sufficiently demonstrate on a balance of probabilities that there has been damage or neglect by the tenant in complying with the requirements of section 32(3) of the *Act.* The tenant has refused access to the garage and has not supplied any of their own photographs or testimony from witnesses to confirm that the garage has been maintained in a state that would negate the landlord's concerns about damage and neglect in this area. In this regard, the only photograph of the inside of the garage shows an interior of the garage so cluttered that I was not initially even able to discern that the storage of materials surrounding a dilapidated vehicle was even on or around a vehicle and not some type of homemade shelving unit. I find that the tenant had ample opportunity to provide evidence of their own to contest the landlord's claim that there had been neglect causing damage to the garage through the storage of what would appear to be a huge volume of material, which the landlord claims presents a fire hazard and could present significant risk to the landlord's property.

Given the photographic evidence, I see little to support the tenant's claim that the premises have been kept in a "very presentable" condition. Although the tenant alleged that the landlord has greatly exaggerated the tenant's care for the condition of the rental premises, I find the tenant's repeated admission that the premises needed "some tidying up" and that the clutter needed to be "thinned out" a significant understatement of the extent of the problem presented by the tenant's lack of attention to taking proper care of the rental unit. I also find an element of contradiction in the tenant's claim on the one hand that the premises are kept in very presentable condition, but on the other hand claiming that they were not provided sufficient time to clean up the premises to the extent requested in the landlord's warning letters.

In reaching my decision, I also take into account that the landlord has provided a number of warnings to the tenants that their tenancy could end for cause if they did not take better care of the premises rented to them. The November 2019 RTB hearing alone should have provided this warning that the landlord was prepared to take action if circumstances did not improve. The additional warnings provided in October and November 2020, and even in February 2021, after the 1 Month Notice had been issued, have apparently led to little resolution of concerns raised by the landlord, which I find are legitimate, given the photographic evidence before me.

Under these circumstances, I find on a balance of probabilities that the landlord has established to the extent required that they had reason to end this tenancy for cause when they issued the 1 Month Notice on November 27, 2020 for the first two of the reasons cited in that Notice.

For these reasons, I deny the tenants' application to cancel the 1 Month Notice. As this tenancy is ending, I also dismiss the remainder of the tenants' application.

The landlord's application to end this tenancy for cause is allowed. The landlord will be given an Order of Possession to take effect on March 31, 2021, the last date for which a payment for use and occupancy of the rental unit has been accepted by the landlord. Since the landlord's application has been successful, I allow the landlord a monetary award of $100.00 to recover the filing fee for their application from the tenants.

Given this decision, there is no need for me to make a determination regarding the third reason cited in the landlord's 1 Month Notice, the alleged breach of a material term of the Agreement. However, given the concerns about the condition of those parts of the rental premises that are visible to the landlord, and despite the limitations placed on

accessing rental units due to the current COVID-19 pandemic, the tenant's refusal to allow entry into the rental unit to inspect the premises may also justify the landlord's assertion that the tenant's refusal to allow for an inspection of the rental unit may also constitute a breach of a material term of the Agreement, as was claimed by the landlord.

Conclusion

I dismiss the tenants' application without leave to reapply.

I allow the landlord's application to end this tenancy on the basis of the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective March 31, 2021. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is issued a monetary award of $100.00. Although the landlord's application does not seek to retain a portion of the security deposit, in accordance with section 72 of the *Act*, I order the landlord to retain $100.00 of that deposit, which is hereby reduced by that amount.

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: March 02, 2021

Residential Tenancy Branch