



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Brothers Agencies Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated March 17, 2021 ("One Month Notice"), and for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided.

An agent for the Landlord, K.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on March 25, 2021; however, the Tenant did not attend the teleconference hearing scheduled for May 3, 2021 at 11:00 a.m. (Pacific Time). The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that

the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on May 3, 2021, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over ten minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, **I dismiss the Tenant's Application without leave to reapply.**

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Agent confirmed the Landlord's email address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Agent confirmed the details in the tenancy agreement: that the fixed-term tenancy began on July 3, 2019, ran to July 31, 2020, and then operated on a month-to-month basis. The tenancy agreement indicates that the Tenant is required to pay the Landlord a monthly rent of \$1,600.00, due on the first day of each month. The tenancy agreement states, and the Agent confirmed that the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit. The Agent said that the Landlord still holds the

security deposit in full. The Agent confirmed that the Tenant remains living in the rental unit, despite the One Month Notice.

The Agent confirmed that the Landlord had served the Tenant with the One Month Notice that was signed and dated March 17, 2021, it has the rental unit address, it was served in person on March 19, 2021, with an effective vacancy date of April 30, 2021. The grounds for the eviction that were noted on the One Month Notice were that the 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;
- caused extraordinary damage to the unit or property;
- not done the required repairs of damage he's done to the unit or property; and
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the section of the One Month Notice entitled: "Details of Event(s):" the Agent wrote:

The unit is filthy, excessively crowded with items, piles of garbage; numerous reminders were given and the situation has not changed.

In the hearing, the Agent said:

The SWAT team has been in the building on multiple occasions, due to the Tenant's behaviour. At one point, [the Tenant] jumped off of his balcony to evade the police. On another occasion, the fire department was trying to get into his apartment via the balcony.

The tenancy agreement states that this is a no smoking building; however, the Tenant vaped while walking with the property manager in the building, and we know he smokes marijuana in the unit.

From photos of the unit, you can see it's in absolute disarray. There is garbage everywhere – it's not a sanitary situation. The Tenant made minimal effort to clean up the mess when ordered to do so. The Police are constantly in the building, which means that the state of the building is not good for other tenants.

On page six [of the Landlord's submissions] there's a written statement from the resident manager and the owner. [C.H.]. is the owner's son and he resides in the

building. The property manager's statement is as to what's been going on in the building.

The Agent referred me to evidence she had uploaded, which details incident reports involving the Tenant.

In an email dated April 13, 2021 from another tenant in the residential property, the other tenant said:

I would like to file a complaint against the tenant occupying unit [rental unit #] at [residential property address]. I saw him vaping in the hallway on the second floor, as he was walking toward his unit. He was inhaling and puffing from his vaporizer the entire time.

Regards,
[C.H.]

The Landlord's documentary submissions include a statement from a property manager about this matter, which includes the following:

During his tenancy the police have attended his unit on multiple occasions and once this included their swat team. During the incident the tenant jumped from the second story balcony and evaded the police. During an annual suite inspection on July 15, 2020, the tenant was observed 'vaping' in the common hallways of the building while arriving for his suite inspection. During the inspection it was discovered he had changed the locks without permission and provided a fake name to myself and the building manager. At this time the unit was unkempt and some minor damage was observed in the unit.

During a more recent inspection on March 10th, 2021 it was found the condition of the unit continued to deteriorate. There was a massive leak coming from the bath tub taps that went unreported. Rotten food and drug paraphernalia in both the kitchen and living room. A written warning was sent to the tenant following this with a follow up appointment set for March 17th 2021.

...

Besides the damage to the unit, our concern remains that the frequent police visits to the property are continuing to disturb other occupants.

[reproduced as written]

In a letter to the Tenant from the Property Manager, G.M., dated March 4, 2021, G.M. said:

Re: Unauthorized Lock Change

It has come to our attention that you have changed the locks to your unit without authorization. Please be advised that this is a breach of your material terms in your Residential Tenancy Agreement, section 21 'LOCKS' as well as a breach of the Residential Tenancy Act section 31 under 'Prohibitions on Changes to Locks and Other Access' which states:

'(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that give access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.'

Please put the original lock back immediately to correct the situation, otherwise we will have the unit to be rekeyed and the cost will be charged to your account. Consider this a clear and final notice that any further breaches will result in the termination of your tenancy.

In a letter to the Tenant dated March 10, 2021 from G.M., the Landlord said:

It has come to our attention that the condition of your unit is excessively crowded with items and that the cleanliness of your unit contravenes your signed 'Residential Tenancy Agreement'.

. . .

At this time we would like to remind you of '**clause 9(b)**' of your rental agreement:

'The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the residential property to which the tenant has access. The tenant must take necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for reasonable wear and tear to the residential premises.'

At this time I am requesting that you clean and discard all rubbish from your unit by **next Wednesday, March 17, 2021** as your building manager, [B.] will be doing a suite inspection on that date at 11:00 am. Should you not comply with this letter, we may have no choice but to issue a 30-day term to end should tenancy as allowed under the 'Residential Tenancy Act'.

[reproduced as written]

The Landlord submitted photographs of the rental unit that show:

- Damaged venetian blinds;
- A crowded room with a variety of items covering tables and the floor;
- Camera shots of police at the rental unit door on:
 - March 1, 2021;
 - March 14, 2021
 - March 18, 2020; and
 - March 31, 2021;
- Undated photographs of the back of the building, with police and/or fire fighters standing below a balcony identified in writing on the photographs as the Tenant's unit.

Analysis

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

Section 47 of the Act allows the landlord to end a tenancy for cause:

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

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(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;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenant's behaviour has:

- unreasonably disturbed other occupants of the residential property,
- put the Landlord's property at significant risk,
- not done the required repairs of damage he's done to the unit or property; and
- breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find that the Tenant's behaviour, which resulted in police attending the residential property multiple times, would contribute to unreasonable disturbance of other occupants of the residential property. I also find that the Tenant's uncleanliness, especially leaving rotten food out in the rental unit could contribute to a variety of pests in the building; I find that this would further unreasonably disturb other occupants of the residential property. I find that changing the locks without the Landlord's permission violates the tenancy agreement, as well as section 31(3) of the Act.

In addition to dismissing the Tenant's claims without leave to reapply, because he did not attend the hearing to present the merits of his claims, I find the following.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of

the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession of the rental unit. I, therefore, award the Landlord with **an Order of Possession, effective two days after service on the Tenant**, since the effective vacancy date in the One Month Notice has passed.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice, as he failed to attend the participatory hearing to present the merits of his case. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of April 30, 2021.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 04, 2021

Residential Tenancy Branch