



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agency
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNRT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- a Monetary Order for the cost of emergency repairs, pursuant to section 33.

The tenant, counsel for the tenant, the property manager, resident manager B.E., and resident manager S.E. (the "resident managers") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was personally served with the tenant's application for dispute resolution on March 10, 2021. I find that the landlord was served with this application for dispute resolution in accordance with section 89 of the *Act*.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue -Severence

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the "One Month Notice") and the continuation of this tenancy is not sufficiently related to the tenant's other claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss the tenant's claim for a Monetary Order for the cost of emergency repairs, with leave to reapply.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to a Monetary Order for the cost of emergency repairs, pursuant to section 33 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2017 and is currently ongoing. Monthly rent in the amount of \$780.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant was personally served with the One Month Notice on February 22, 2021. The tenant filed to dispute the One Month Notice on February 23, 2021. The One Month Notice is dated February 22, 2021 and has an effective date of March 31, 2021.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The Details of Cause section of the One Month Notice states:

On numerous occasions the tenant has caused the resident manager stress and anxiety beyond what is reasonable for a building manager to endure. This is done by continually making false accusations about the building, the resident manager and the management company. He has posted false information on the bulleting board in the building laundry about work not being done, all repairs are attended to as they are received. He has demanded replacement of appliances which are deemed in good working order b y repair persons. He switched out his fridge without permission and left the building fridge in the hallway. He has consistently defied the BC mandatory mask requirement in common areas of the property which jeopardizes the health and safety of his fellow residents. He reported exaggerated information to government bylaw officials about the sate of the building. He told another resident he made the call while within hearing distance of the resident management team.

Landlord's Submissions

The property manager testified that in June of 2020 the management changed and that since that change, the tenant has harassed the resident managers with excessive complaining. The property manager testified that the complaints were usually about the state of the building or people in the building and that the complaints were sent to numerous people including the director of the landlord company. The property manager testified that the tenant complained about repairs that the building, in his opinion required, and complained when his timeline for the repairs were not met. The property manager testified that the tenant's complaints were exaggerated.

The landlord entered into evidence complaints from the tenant about a variety of tenancy related issues on the following dates:

- June 18, 2020- complaint about another tenant storing boxes on balcony
- Undated- complaint about cleanliness of common spaces in building and silverfish
- July 9, 2020- complaint about ineffectual managers and concerns for the building

- July 13, 2020- complaint about broken sprinkler and sprinkling system
- July 13, 2020- complaint about leaking kitchen spout
- [Undated]- complaint regarding a bbq taken out of common area
- [Undated] – request update on the schedule to repair issues identified by previous management
- July 14, 2020- tenant requests replacement of countertop
- July 15, 2020- tenant expressed concern about incident on July 13, 2020 in which the building manager knocked on his door and yelled at him about his request for repairs.
- July 17, 2020- Request someone to assess the operation of the tenant's blinds
- August 3, 2020- Complaint about boxes on another tenant's balcony
- August 8, 2020- Complaint about attitude and ability of resident manager B.E.
- August 11, 2020- Request for management to look at front hall door because it is not closing properly
- August 14, 2020- letter to resident manager B.E. regarding his inappropriate reaction to the tenant's August 8, 2020 letter
- August 17, 2020- request for blinds to be looked at
- September 1, 2020- request for locker
- September 16, 2020- request for resident manager B.E. to remove cardboard box set up by street people and concern over street people breaking into cars
- October 20, 2020- request for update on status of new blinds
- October 21, 2020- letter expressing frustration that resident manager informed him on October 20, 2020 that new blinds not ordered
- November 30, 2020- Work order request for repair to kitchen stove
- February 14, 2021- Complaint- snow clearing not done till after 9:30 am – tenant claims to have slipped and fallen. Complaint about a homeless encampment and a claim other tenants took it apart and left it in front of the shed.
- February 20, 2021- Maintenance request for toilet
- February 22, 2021- Work order request- toilet repair

Some of the above letters were posted in common areas of the building. All of the tenant's requests for repairs were addressed by the landlord.

The tenant was sent a letter from the landlord on August 7, 2020 which states in part:

Your complaints are heard, however you may not always be the person who receives the response. We do not always have time to explain to everyone what is happening behind the scenes and why they happen as they do.

I would request you no longer place notices around the building that may be disparaging to other or our company. Should you feel we are not responding or acting as quickly as you would like, please feel free to provide us a notice to vacate and locate new accommodations. Otherwise we respectfully ask that you allow us to do the work on the property as the owner direct us to.

Resident manager S.E. testified that in August 2020 a memo was posted in the building that states in part:

If a tenant is caught; whether through a report, or via cameras in the building; of committing acts of vandalism, abuse of the property or destruction of any element of the building/property, they will be facing a notice to end their tenancy.

The above memo dated August 10, 2020 was entered into evidence. Resident manager S.E. testified that a homeless person made a shelter out of a bedframe and a fence and that the tenant took this shelter apart leaving its pieces on the path to the shed where the snow blower was kept. Resident manager S.E. testified that she considers this vandalism and that the tenant's tenancy should end because of this.

Resident manager S.E. testified that the tenant, in his February 14, 2021 complaint stated that other people took down the homeless encampment, but she witnessed the tenant tear it down.

The property manager testified that the security cameras were checked on the date that the tenant claimed to have fallen in the snow and that he did not fall. The property manager testified that the tenant made false accusations.

The property manager testified that there was a water leak in the subject rental building but that the tenant's unit was not involved with the leak, other than the fact that the water for the entire building had to be turned off for a short period of time. The property manager testified that other tenants overheard the tenant say that the tenant called the Board of Health on the landlords regarding the leak.

The property manager testified that the tenant's constant complaints have been unbearable and that the tenant's complaints harass the resident managers.

The property manager testified that the tenant has not worn a mask in common areas which puts everyone's health at risk. The landlord entered into evidence a complaint

about same from another tenant dated February 19, 2021.

Tenant's Submissions

Counsel for the tenant submitted that none of the evidence provided by the landlord proves that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Counsel for the tenant submitted that the tenant simply made observations as to the state of affairs at the subject rental property and that the dispute centers around a personality conflict between the resident managers and the tenant. Counsel for the tenant submitted that a personality conflict is not grounds for eviction.

Counsel for the tenant submitted that preventing the tenant from complaining to the landlord about issues in the building is a slippery slope. Counsel submitted that none of the correspondence from the tenant is aggressive or threatening. Counsel for the tenant submitted that taking down the homeless shelter at the subject rental property is not vandalism.

The tenant denied calling the Board of Health and stated that the statements made by other about him calling the Board of Health is hearsay.

Counsel for the tenant submitted that it is reasonable for the tenant to request timelines for repairs to be made. Counsel for the tenant submitted that the tenant pays his rent on time, does not damage the subject rental property and does not unduly interfere with other residents or the resident managers.

Landlord's Response

The property manager testified that on a number of occasions the tenant has made comments about management that are derogatory. The property manager testified that the resident managers are doing their job and some delays during COVID 19 cannot be avoided.

The property manager testified that the tenant only wants qualified tradesperson working at the subject rental property instead of their experienced handyman. The property manager testified that this put the building at risk for added expenses.

Analysis

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 47(1)(d)(ii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Upon review of all of the tenant's complaints, I find that while the tenant made more complaints than may have been expected by the landlord, none of the complaints are completely unfounded or unreasonable. I accept the property manager's testimony that some of the complaints were exaggerated, but I do not find that this exaggeration is grounds for eviction.

I accept the resident manager's testimony that the tenant tore down the homeless encampment, but I do not find that this constitutes vandalism to the subject rental property as the property and the shed were not damaged.

I accept the property manager's testimony that the tenant did not slip and fall on snow and ice. I find that this fabrication likely disturbed the landlord, but I also find that the disturbance is not significant enough to constitute an unreasonable disturbance leading to an eviction. However, the tenant is cautioned that continued fabrication or exaggeration of serious events could be grounds for eviction under section 47 of the *Act*.

I find, on a balance of probabilities, that the tenant likely called the Health Board regarding the water leak. I find that it would be inappropriate to penalize a tenant for contacting the Health Board for a concern. I agree with counsel for the tenant, preventing a tenant from making complaints or requests for repairs is a slippery slope that could significantly impair the tenant's rights enshrined in the *Act*.

I find that a single complaint against a tenant for failing to wear a mask is not significant enough to warrant an eviction under section 47(1)(d)(i) or section 47(1)(d)(ii) of the *Act*.

I find that the landlord has not proved, on a balance of probabilities, that the tenant has:

- a. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or
- b. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The One Month Notice is therefore cancelled and of no force or effect.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy will continue on in accordance with the *Act*.

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: June 01, 2021

Residential Tenancy Branch