



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 583230 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC PSF FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated March 15, 2021 (1 Month Notice), for the landlord to provide services or facilities as required by the tenancy agreement or law, and to recover the cost of the filing fee.

The tenant, the spouse/support person for the tenant, SG (support), the owner of the numbered landlord company, AK (owner), the caretaker for the landlord, AS (caretaker) and an agent for the landlord HF (agent) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the email addresses of the parties were confirmed at the outset of the hearing. The decision will be sent by email to both parties.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be set aside?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on February 28, 2012. Originally 2 tenants were listed the tenancy agreement, and there is no dispute that one of the tenants, SC, has since vacated the rental unit and that this occurred "years ago" according to the tenant, which was not disputed by the agent during the hearing. The parties agreed that current monthly rent is \$1,249.00 per month and is due on the first day of each month.

The tenant confirmed they were served with the 1 Month Notice on March 16, 2021 with an effective vacancy date of April 30, 2021. The tenant disputed the 1 Month Notice on March 22, 2021 which is within the 10-day timeline provided for under the Act to dispute the 1 Month Notice. The landlord listed the following causes on the 1 Month Notice:

1. Tenant has allowed an unreasonable number of occupants in the unit/site/property.
2. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

3. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
4. Tenant has assigned or sublet the rental unit without the landlord's consent.

The 1 Month Notice "Details of Cause(s)" section reads as follows:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): Numerous noise complaints. Tenant has not informed management of other occupants within the unit. Has put the owner's property at risk. There was a leak that the tenant did not report and then it leaked down to the unit below and broke the bath tub tiles. There is a major health issue as there is black mold in the bathroom on the bath tub, toilet and ceiling. He has not kept the unit in a clean manor. Plumber and cleaner are not willing to go into this tenant's unit to do the health risk it poses to them.

Regarding the "numerous noise complaints", all parties were advised that those details were much too vague to be successful as I find the tenant would have no way to defend themselves against such allegations without dates, times and details of the noise complaints, which I will address further below.

Regarding the "Tenant has not informed management (sic) of other occupants within the unit", the tenant confirmed that since the co-tenant vacated years ago, the tenant has since obtained a roommate, and SG, the spouse of the tenant for a total of 2 occupants and the tenant are residing in the rental unit. There was no dispute that the rental unit is a 2-bedroom unit. The caretaker originally stated that there was 4 people in the rental unit as interpreted by the owner, on the night of the leak and later the caretaker changed their testimony by stating there was only 2 people in the unit when they attended on the early morning of March 14, 2021.

Regarding "There was a leak that the tenant did not report then it leaked down to the unit below and broke bath tub tiles" and issues related to black mould, the agent confirmed that the bathtub, which shows as an old blue bathtub in the photos before me, is approximately 50 years old, which is the age of the building, so is the original bathtub. The cause of the leak was the faucet that the tenant testified broke off in his hand when having a shower at 3am in the early morning of March 14, 2021. The tenant stated they called the caretaker who arrived 20-30 minutes later. The tenant stated they broke 2 tiles surrounding the faucet, which appeared to be very old, and the tenant stated that they could not find a water shut off valve. The agent testified that the faucet was replaced in approximately 2008 but did not have a specific date due to the time that has passed. The agent stated they recall 2008 as that year they were replacing other faucets in the building.

The landlord was asked if there was still black mould or any leaks and the agent confirmed that the tenant eventually cleaned all the mould and that as of April 9th, the leak was fixed and by April 12th, the bathroom was fully renovated and repaired. The agent stated that at the time of the leak on March 13, 2021, which is actually the early morning of March 14, 2021, the bathroom was not clean enough for a plumber or staff to attend the rental unit due to health concerns. The photo evidence submitted does not support a health hazard as described by the agent, which I will address further below. The agent described a "Caution Letter", which was dated the same date the 1 Month Notice was issued, March 16, 2021 (Caution Letter). The parties were advised that I would not afford the Caution Letter any weight as it was not served prior to the 1 Month Notice being issued in this matter.

Analysis

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

When a tenant disputes a 1 Month Notice on time, which the tenant did in this matter, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1Month Notice is valid, the 1 Month Notice will be cancelled.

Noise complaints - As indicated above, I find the Details of Cause(s) listed by the landlord to be too vague for the tenant to properly rebut the 1 Month Notice. The Details of Cause(s) do not include date, times, or locations or set out the specific noise complaints being alleged. Therefore, I find it unnecessary to consider any further evidence related to the allegation of noise complaints as it was too vague. As a result, I dismiss this portion of the 1 Month Notice due to the allegation being too vague to support eviction.

Unreasonable number of occupants – Firstly, the landlord did not object to the fact that the tenant's roommate vacated years ago. Secondly, the rental unit is a 2-bedroom unit. Therefore, I find the spouse of the tenant and a roommate do not support an unreasonable number of the occupants in the rental unit. As a result, this portion of the 1 Month Notice is dismissed due to insufficient evidence.

Leak and mould – Firstly, the bathtub was the original bathtub which would make it 50 years old according to the agent. Although the agent testified that the faucet was replaced in approximately 2008, I note that the agent did not have a specific date due to the time that has passed. In addition, Policy Guideline 40 – Useful Life of Building

Elements states that faucets have a useful life of 15 years and 2008 would make the faucet 13 years old and as a result, I find that more likely than not the faucet has reached it's useful life or the connection to the faucet has exceeded its useful life as I heard no evidence to contradict that the faucet fell off in the tenant's hand while trying to shut off the faucet. As a result, I find that the tenant did not cause the leak or the black mould given the age of the bathtub and pipe behind the faucet in this matter. Therefore, I find the landlord has provided insufficient evidence to support this portion of the 1 Month Notice and it is dismissed, without leave to reapply.

In reaching this finding I have also considered that the agent confirmed the leak has been fixed and that there was no evidence before me that there has been another leak since the repair in April 2021. I find that breaking the two tiles when the faucet fell into the tenant's hand was not malicious and I accept that the tenant was trying to stop the water by attempting to located the water shutoff valve as it took 20-30 minutes before the caretaker could arrive to shut off the water.

Given the above, I find the landlord has failed to prove that the 1 Month Notice was valid, and therefore, **I set aside** the 1 Month Notice. It is of no force or effect.

I ORDER that the tenancy continues until ended in accordance with the Act.

As the tenant's application was successful, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the Act in the amount of **\$100.00** to recover the cost of the filing fee. **I ORDER a one-time rent reduction in the amount of \$100.00** from the next month of rent for the tenant in full satisfaction of the tenant's recovery of the cost of the filing fee pursuant to section 72 of the Act.

Conclusion

The tenant's application is successful.

The 1 Month Notice is cancelled as it is too vague and lacked sufficient evidence from the landlord as noted above.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to both parties.

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: June 22, 2021

Residential Tenancy Branch