



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC

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;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and her father attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's father and I were the only ones who had called into this teleconference.

The landlord confirmed their email address for service of this decision and order.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause (the “One Month Notice”), pursuant to section 47 of the *Act*?
2. If the tenant’s application is dismissed or the One Month Notice is upheld and the notice complies with section 52 of the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

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

The landlord provided the following undisputed testimony. This tenancy began on December 15, 2018 and is currently ongoing. Monthly rent in the amount of \$1,550.00 is payable on the 15th day of each month. A security deposit of \$700.00 was paid by the tenant to the landlord.

The landlord testified that she personally served the tenant with the One Month Notice on February 27, 2021. The landlord’s father testified that he witnessed his daughter serve the tenant with the One Month Notice on February 27, 2021. The tenant filed to dispute the One Month Notice on March 9, 2021.

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

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
 - put the landlord’s property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site.

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

- Big oil spill in driveway
- Letting the pipes freeze by being unwilling to keep the furnace going
- Using the property outside what it’s zoned for with dump truck
- Vehicles and trailers all over the front lawn

- Repeated late payments December 18th, 2020, November 23rd, 2020, August 17th, 2020, July 17th, 2020, May 18th, 2020, Nov 17th, 2019, Oct 18th, 2019, Sept 17th, 2019, June 17th, 2019.

The landlord testified that the tenant was late paying rent on all the dates listed on the One Month Notice and has not paid rent that was due on June 15, 2021. The landlord testified that rent was due on the 15th day of each month.

The landlord testified that the tenant told her that the pipes in the subject rental property froze because he did not leave the furnace on in the winter. The landlord testified that the tenant told her that he did not leave the furnace on because it was expensive. The landlord testified that the tenant put her property at significant risk by turning the heat off in the winter and allowing the pipes to freeze.

The landlord and the landlord's father testified that the tenant spilled oil all over the driveway. Photographs of same were entered into evidence. The landlord testified that the oil spill is a form of pollution and would require cleaning.

The landlord and the landlord's father testified that the tenant kept upwards of 10 vehicles at the subject rental property, many of which were unlicensed, contrary to local bylaws. Photographs of a variety of vehicles on the property were entered into evidence. The landlord testified that the tenant also parked his commercial dump truck on the property contrary to local bylaws. Picture of the tenant's dump truck parked at the subject rental property were entered into evidence. The landlord testified that the Regional District gave her a warning for breaching the local bylaws. The warning was entered into evidence as was a letter from the Regional District regarding the breach of local bylaws. The letter states:

Prohibited Vehicles in an R or R3 zone:

6. Except when loading, unloading or carrying out a construction or maintenance activity the following vehicles are not permitted to be parked on a parcel in an R zone or and R3 zone.

- a. Any commercial vehicles larger than 4000 Kg gross vehicle weight;
- b. More than two commercial vehicles of less than 4000 Kg gross vehicle weight each;
- c. Recreational vehicles or park model trailers with a length greater than 12.2 m (40ft);
- d. Logging, industrial or construction vehicles or equipment.

7. Except for recreational vehicles stored in neighbourhood recreation and storage facilities, on a parcel in an R or R3 zone, the exterior storage or parking of more than one unlicensed car, truck, recreational vehicle, park model trailer or commercial vehicle is prohibited.

The landlord testified that all the vehicles damaged the lawn and garden beds at the subject rental property.

Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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 re-apply.

The tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

Based on the undisputed testimony of the landlord and the landlord's father, I find that service of the One Month Notice was effected on the tenant on February 27, 2021, in accordance with section 88 of the *Act*. This finding is also supported by the fact that the tenant disputed the One Month Notice on March 9, 2021. Had the tenant not received the One Month Notice, he would not have filed to dispute it. Upon review of the One Month Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

Based on the undisputed testimony of the landlord I find that the tenant was late paying rent in June, September, October and November of 2019 and in May, July, August,

November and December of 2020. I find that the tenant was late on more than three occasions between June 2019 and the date the One Month Notice was served. I therefore uphold the One Month Notice.

Section 47(1)(d)(iii) 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 put the landlord's property at significant risk.

Based on the undisputed testimony of the landlord I find that the tenant allowed the pipes in the house to freeze which put the property at significant risk as frozen pipes could crack.

Section 47(1)(f) 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 caused extraordinary damage to a rental unit or residential property.

Based on the undisputed testimony of the landlord and the landlord's father and the photographs entered into evidence, I find that the tenant spilled oil on the driveway of the subject rental property. I find that soil contamination from oil spills constitutes extraordinary damage to the subject rental property because it is outside the typical damage and regular wear and tear one can expect to find at the end of a tenancy. I therefore uphold the One Month Notice.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since the One Month Notice meets the form and content requirements of the *Act*, I have dismissed the tenant's application, and upheld the One Month Notice, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As I have determined that the landlord is entitled to an Order of Possession pursuant to section 47(1)(b), section 47(1)(d)(iii) and section 47(1)(f) of the *Act*, I decline to consider if the landlord is entitled to an order of possession pursuant to section 47(1)(g) of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 17, 2021

Residential Tenancy Branch