



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on July 19, 2021, at 11:00 am. The Tenant applied for the following remedy, pursuant to the *Residential Tenancy Act* (the Act):

- cancellation of the Landlord's 1 Month Notice pursuant to section 47 (the Notice).

The Landlord and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each other's documentary evidence, and were willing and able to proceed with all evidence. Neither party took issue with the service of the documentation. I find both parties sufficiently served each other with their evidence for the purposes of this proceeding.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

A copy of the Notice was provided into evidence and it shows that the landlord issued the Notice for the following reasons:

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

- *Put the Landlord's property at significant risk*

Under the "Details of Cause" section, the landlord specified the following:

"Today, (26th March 2021) You did not allow entry into your unit, for emergency reasons. There was a significant risk to my property, the other tenants and their property. You were repeated asked to allow my agent and plumber into the unit for emergency purposes to shut off the main water intake. You refused and proceeded to attempt to shut off the main water valve yourself. It is my understanding it took multiple attempts for you to do this. When you could have simply allowed the professionals to enter the suite and do so. Per the tenancy agreement, a landlord and /or his agent may enter the unit on an emergency basis. You did not allow this to occur. I have reached out to you by phone and text to arrange for a site visit with notice, and you have not engaged with me or my agent with any regularly. Per tenancy agreement I am allowed to inspect my property with 24 hour notice. Your regular lack of cooperation, puts my property and that of that other tenants at an un due risk, there by increasing the potential for significant damage to my property."

In the hearing, the Landlord testified that this Notice was issued due to one main incident, which occurred on March 26, 2021, where the Tenant put the whole building at risk due to not replying to text messages or phone calls in a timely manner (particularly the morning of March 26, 2021), and also because she did not allow the Landlord's plumber to enter the unit when there was an "emergency" (on March 26, 2021).

The Landlord stated that he bought the building about a year ago, and he has been trying to fix and repair the building, despite living in another city. The Landlord stated that he has always tried to communicate by email or text message with the Tenant and has always found her to be slow to respond and hard to communicate with. The Landlord stated that recently, he has hired an agent, who is helping with managing this 4-plex building.

With respect to the incident on March 26, 2021, the Landlord stated that he received a call around 7:00 am from another tenant in the building (in a separate rental unit), and

he informed the Landlord that there was a plumbing leak in his bathroom. More specifically, that individual reported to the Landlord that his shower control valve had stopped working, and water was continuously running out of the showerhead, mostly into the bathtub. The Landlord was unclear about whether there was water leaking from the shower area into adjoining areas, or whether the water was only leaking from the showerhead into the shower, and down the appropriate drain.

The Landlord stated that the Tenant who reported the leak said that the shower control valve stopped working, and the water was continuously running in the shower for around 4 hours before he actually called the Landlord at 7 am. The Landlord stated that he immediately reached out to his agent, who then called the plumber. The Landlord stated that he also tried to call the Tenant several times but there was no answer. The Landlord stated that also tried texting the Tenant, and calling again, with no response or answer. The Landlord stated that eventually, his agent and his plumber went to look at the leak in the adjoining unit, and determined that they needed to access the main water control valve, which is located in this rental unit. As such, the Landlord's agent and plumber attended this rental unit to turn off the water control valve in the hours following the initial report to the Landlord.

The Landlord stated that it is his understanding that the Tenant told the plumber he could not come in to turn off the water control valve which was located in her unit. The Landlord stated that the Tenant offered to close the valve herself when she answered the door. The Landlord stated that the Tenant turned off the wrong valve, and the plumber had to come back a few minutes later to ask her to switch off the other valve. The Landlord stated that the Tenant put his property at significant risk with her preventing access, and by her slow communication with the Landlord.

The Tenant stated that she strongly believes the Landlord is trying to evict her in order to increase rent. The Tenant stated that this whole Notice was issued due to the incident on March 26, 2021. The Tenant stated that on that morning, she was home, but did not receive the Landlord's text messages, voice mails, or phone calls when he was trying to contact her early that morning (around 8:00 am). The Tenant stated that she was sleeping at the time the Landlord was trying to contact her, and she feels the Landlord is trying to punish her for not responding to his text messages as quickly as he wants. The Tenant stated that she heard a knock at the door around 10:00 am that morning and when she opened the door, she saw the Landlord's agent, and the plumber, who were wanting to access the water shut off valve for the whole building, which was located inside her unit.

The Tenant stated that she has had to access this valve before so she is familiar with where it is and what it does. As a result, the Tenant stated that she offered to turn the main water valve off for the Landlord's agent and plumber when they came to her door. The Tenant stated that they never actually asked to come into the unit, and she denies that she refused access. The Tenant stated that she was specifically trying to help by offering to turn the valve off for them. The Tenant went on to state that she ended up turning off the wrong water valve, because they are unlabelled, which she found out when the Landlord's agent and plumber returned to her front door a couple minutes later saying the water was still running. At that time, the Tenant stated that she immediately went and switched off the correct water valve. The Tenant stated that this all happened within a matter of minutes of the Landlord's agent and plumber showing up at her door, so she was very surprised when she received this Notice later that same day. The Tenant stated she was doing her best to help the Landlord, and in no way prevented their access to the unit.

The Landlord pointed to the text message history between himself and the Tenant, to show that the Tenant routinely takes too long to reply to communication, such as for inspections and site visits.

Analysis

In this decision, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. I note in civil law matters such as these, the standard of proof is based on a balance of probabilities, not the criminal court standard of proof beyond a reasonable doubt.

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on March 26, 2021.

Although the Landlord has some generalized complaints about the Tenant's communication style, and about the payment of rent, my analysis will focus on the incident which took place on March 26, 2021, as this is what the Landlord largely spoke to in the hearing, and what was highlighted on the Notice itself.

The Landlord issued the Notice under the following ground:

Tenant or a person permitted on the property by the tenant has put the Landlord's property at significant risk

Having reviewed this matter, I note there was a plumbing issue in a neighbouring unit around 2-3:00 am on March 26, 2021. It appears the shower control (water valve) in that unit had failed, and there was water running constantly from the neighbouring Tenant's showerhead. I am satisfied there was a water leak in the shower of the neighbouring unit. However, I found the Landlord's explanation in the hearing as to the nature and extent of the leak was somewhat vague and unclear. The Landlord was not clear as to how much, if any water was actually leaking from the shower unit such that I could be satisfied there was a significant risk to the building. It appears the water leak may have been largely contained within the shower itself, posing little risk to surrounding areas. The lack of evidence as to the nature and extent of the leak, combined with the fact that the resident of that unit waited 4 hours to report the leak to the Landlord leads me to believe it was not as much of a risk to the overall building, as it has been portrayed.

In any event, regardless of whether it was an emergency or not, there is insufficient evidence the Tenant prevented access when she became aware of the Landlord's need to enter her suite to turn off the main water supply. Further, there is insufficient evidence to show that the Landlord's agent or plumber tried to gain access and was told "no" by the Tenant. I note the Landlord was unhappy the Tenant was not sufficiently responsive to calls and text messages, both generally, and early on March 26, 2021. However, I do not find there is sufficient evidence that the Tenant unreasonably or intentionally obstructed, delayed, or interfered with the Landlord's rights and obligations such that she put the Landlord's property at significant risk. The Tenant asserts that she was unaware of the flood until the Landlord's agent and plumber showed up at her door. Although the Tenant initially turned off the wrong water valve, it appears she was acting in good faith and was trying to help. Further, it appears the correct valve was shut off only a matter of minutes after the Landlord's agent and plumber attended the rental unit in person.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on March 26, 2021, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with her application, I grant the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: July 19, 2021

Residential Tenancy Branch