



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MNDCT, LRE, OLC, FFT

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;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties 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 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.

Both parties agree that the tenant served the landlord with this application for dispute resolution and the tenant's amendment to this application for dispute resolution via

registered mail. I find that the tenant's application for dispute resolution and amendment were served in accordance with section 89 of the *Act*.

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 notices to end tenancy and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims 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 notices to end tenancy.

The tenant's other claims are unrelated in that the basis for them 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 notices to end tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice") and cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") and recovery of the filing fee for this application.

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 or the landlord's notice to end tenancy is upheld 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, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. If the tenant's application to cancel either Notice to End Tenancy is dismissed or either of the landlord's Notices to End Tenancy is upheld, and the Notice to End Tenancy in question complies with 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 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 October 1, 2017 and is currently ongoing. Monthly rent in the amount of \$871.25.00 is payable on the first day of each month. A security deposit of \$420.00 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 landlord personally served the tenant with the One Month Notice on March 20, 2021. The One Month Notice was entered into evidence and 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;
 - put the landlord's property at significant risk.
- Tenant has not done required repairs of damage to the unit/site.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The One Month Notice is dated March 20, 2021, is signed by the landlord and states that the tenant must move out by May 1, 2021. The Details of Cause section of the One Month Notice states:

[The tenant] has repeatedly refused to stop spreading birdseed over the driveway (March 5, and 15 by text). This has attracted rats and poses a danger of attracting bears, and of making the other tenants chickens or dog ill. [Names redacted] the other tenants at the property asked her to stop March 4 and 12. She refused. [The tenant] has packed so much stuff into the carriage house that air circulation was thwarted and mould grew up the walls behind the furniture. She did not inform me of mould and has repeatedly denied me entry to examine and repair the damage (by text and email, March 17, 18, 19). [The tenant has

failed to keep the unit in health and cleanliness standards. A real estate appraiser noted the mould.

When I got the report on February 13 from [the appraiser] I responded to the concern of mould. I found cat feces on the walls and in the radiator of the back room. There were mouldy items in the room. I carefully moved them into the other room to assess the damage and see if it could be cleaned. It did come off with cleanser. I have pictures, dated.

The landlord testified that she and her husband are going through divorce proceedings and that as part of those proceedings the subject rental property was appraised to aid in the division of assets. The appraisal report was entered into evidence, and states in part:

- the subject rental property was appraised on February 3, 2021 and the appraisal report was completed on March 2, 2021; and
- It is noted that the bedroom window had heavy mold around the window framed, as indicated within the attached photo. It is recommended that this be further inspected to determine cause. It is also noted that the roof on the cottage had heavy moss and should be cleaned.

The landlord testified that after receiving the above report she scheduled an inspection of the subject rental property for March 18, 2021. The landlord testified that the tenant did not advise her of mould at the property. The landlord testified that she found the subject rental property packed with the tenant's personal possessions and that mould was growing up the walls behind the tenant's piles of possessions and was heavy in the windows. The landlord testified that she was appalled by the condition of the property and is extremely concerned about the mould growth and the danger that poses to the subject rental property. The landlord entered into evidence photographs taken of the subject rental property on March 18, 2021. The photographs show piles of possessions and black coloured mould/mildew growing up several walls. The mould growth is conspicuous and obvious. The landlord also entered into evidence photographs of mould/mildew on windows and windowsills.

The tenant testified that the subject rental property grows mould and that she planned on cleaning it in the spring.

The landlord testified that the carpets were full of cat feces. The tenant did not address this testimony.

The landlord testified that after the March 18, 2021 inspection the tenant refused to grant the landlord access to clean and repair the areas damaged by mould. The landlord testified that she is extremely concerned about the damage caused by the mould and that the damage will continue to grow because the tenant has refused to allow the landlord access. The landlord testified that she is very concerned about further mould growth in the attic but has not been able to check it because the tenant has denied access. The tenant did not dispute the landlord's claims that she refused the landlord access to the subject rental property. The tenant testified that the subject rental property will be sparkling clean when she moves out and that the mould will come off with cleaner as noted in the One Month Notice.

The landlord testified that other tenants who live in another rental suite on the same property complained to her about the tenant spreading bird seed all over the driveway and that this attracted rats. The above emails were entered into evidence. The landlord testified that she asked the tenant to stop spreading bird seed via text on March 5, 2021 and via a letter on March 13, 2021. The above communications were entered into evidence. The landlord testified that the tenant refused to stop spreading bird seed.

The tenant testified that she only spread a ½ cup of bird seed each morning. The tenant did not dispute that she refused to comply with the landlord's instruction to stop spreading bird seed.

Both parties agree that the landlord personally served the tenant with the Two Month Notice on March 31, 2021. The Two Month Notice was entered into evidence and states that the landlord or the landlord's spouse intends on occupying the subject rental property. The Two Month Notice is dated March 31, 2021, is signed by the landlord and states that the tenant must move out by January 6, 2021. The landlord testified that the move out date should have read May 31, 2021 and that the January 6, 2021 date was put down on accident.

The landlord testified that she and her husband are getting a divorce and she plans on moving into the subject rental property as she can no longer stay in the marital home.

The tenant testified that she disputed the Two Month Notice because she did not believe it was truthful but that it may be truthful.

Analysis

Based on the testimony of both parties, I find that the One Month Notice was served on the tenant in accordance with section 88 of the *Act*. Upon review of the One Month Notice I find that the One Month Notice complies with the form and content requirements of section 52 of the *Act*.

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 did not inform the landlord of the mould/mildew problem at the subject rental property. Based on the landlord's testimony and the appraisal report and photographs entered into evidence I find that the mould/mildew problem is significant in nature and poses a significant risk to the subject rental property.

I find that the tenant put the landlord's property at significant risk by not informing the landlord of the presence of black coloured mould/mildew growing up the walls of the subject rental property.

I accept the landlord's undisputed testimony that the tenant has refused the landlord access to the subject rental property. I find that the tenant's refusal to grant the landlord access to remediate the mould/mildew problem has put the landlord's property at significant risk as mould/mildew can cause significant damage to a property when allowed to grow unchecked.

Pursuant to my above findings, I uphold the One Month Notice and dismiss the tenant's application to cancel it.

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:

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

I find that since the One Month Notice complies with section 52 of the *Act*, the tenant's application to cancel the One Month Notice was dismissed and the One Month Notice was upheld, the landlord is entitled to a two-day Order of Possession in accordance with section 55 of the *Act*.

As I have determined that this tenancy has ended pursuant to the One Month Notice, I decline to consider the Two Month Notice because the issues are no longer applicable. The tenant's application to cancel the Two Month Notice is therefore dismissed without leave to reapply.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

The tenant's application to cancel the Two Month Notice is dismissed without leave to reapply.

The tenants' application to recover the \$100.00 filing fee 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: July 12, 2021

Residential Tenancy Branch