



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, RP, LAT, OLC, RR, FFT, ERP, PSF**

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in July 2015. Currently the monthly rent is \$1,425.00 payable on the first of each month. The rental unit is a suite in a detached house. The landlord previously resided in the other portion of the building but has since vacated.

The landlord issued a 1 Month Notice dated March 22, 2021. The reasons provided on the notice for the tenancy to end is that:

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 landlord provided details of the incidents that led to the issuance of the 1 Month Notice. The landlord submits that the behaviour of the tenant and their partner has significantly deteriorated over the past year. The tenant and their partner have acted in a hostile, aggressive and inappropriate manner towards the landlord including making inappropriate sexual remarks in text messages, engaging in hostile interactions with the landlord and drunkenly damaging property.

The landlord detailed one specific incident on March 6, 2021 when the tenant's partner was observed throwing debris across the driveway of the rental unit and hitting a vehicle

with a large metal rod. The tenant's partner proceeded to kick a fluorescent light at the landlord when the landlord approached to deescalate the situation. The landlord said that this incident was a particularly egregious example of ongoing hostile and disruptive behaviour by the tenant and their partner.

The landlord gave testimony about the fraught relationship with the tenant and incidents of confrontation and disagreements. In addition, the landlord submitted into evidence copies of the multiple text messages that were sent by the tenant's partner making unwanted, uninvited sexual remarks.

The tenant disputes the landlord's characterization of the events and submits that they are the victims of harassment by the landlord and their family. The tenant says that the text messages sent are simply flirting and not a basis for a tenancy to end. The tenant says that any hostile interactions are instigated by the landlord or escalated by their aggressive and confrontational manner.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

Based on the totality of the evidence including the testimony of the parties, the written submissions and the documentary evidence, I am satisfied that the landlord has met their evidentiary onus and demonstrated a valid basis for the 1 Month Notice of March 22, 2021.

Where the parties provide conflicting testimonies, I find the landlord to be a more credible witness. They provided cogent, reasonable testimony which is supported in the documentary materials. I find the tenant's testimony to generally have little air of reality and not in line with what would reasonably be expected under the circumstances.

I find the tenant's characterization of the multiple unsolicited and unwelcome text messages as "flirting" to be abhorrent. Unwelcome inappropriate remarks are the very definition of harassment. The documentary evidence shows that these messages were unsolicited and unwelcome by the landlord.

I further accept that there was a physical confrontation on March 6, 2021 with the tenant's partner kicking a fluorescent light tube at the landlord. I find that kicking any object at another person to be an inherently violent act and this is exacerbated when the object contains toxic materials as found in a fluorescent bulb. I do not find the tenant's explanation of the incident to excuse their behaviour.

I am satisfied on a balance of probabilities that the landlord has established that there has been significant interference with and unreasonable disturbance of the landlord and others which gives rise to a Notice to End Tenancy for Cause. Accordingly, I dismiss the tenant's application seeking cancellation of the notice.

I find that the notice of March 22, 2021 meets the form and content requirement of section 52 of the Act as it is in the prescribed form, is signed and dated by the landlord, identifies the parties and the dispute address, and provides the reason for the tenancy to end. Therefore, I issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue an Order effective 2 days after service on the tenant.

As this tenancy is ending, I find it unnecessary to make a finding on the portions of the tenant's application pertaining to an ongoing tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find insufficient evidence in support of the portions of the tenant's application seeking a monetary award or retroactive reduction in the rent for this tenancy. I find the tenant's submissions to consist primarily of subjective complaints that are not supported in the

documentary evidence, disputed by the landlord and have little air of reality. I find the tenant's complaints about the condition of the rental unit including broken doors and water systems to have little support in the documentary materials. I find the tenant's submission that the landlord has intentionally disrupted their quiet enjoyment of the rental unit and their ability to earn income by causing excessive noise while working on the property to have little air of reality. Taken in its entirety I find the tenant has not met their evidentiary onus for any portion of their claim and consequently dismiss it without leave to reapply.

As the tenant was unsuccessful in their application they are not entitled to recover their filing fee.

Conclusion

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

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises 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 23, 2021

Residential Tenancy Branch