



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenant: CNC-MT, FFT
Landlord: OPC, FFL, MNDL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the

Act, I find that both the landlord and tenant were duly served with the Applications and evidence.

The tenant confirmed receipt of the 1 Month Notice dated March 18, 2021, which was personally served to the tenant on that date. Accordingly, I find the tenant duly served with the 1 Month Notice dated March 18, 2021.

Preliminary Issue—Tenant’s Application for an Extension of Time to File Their Application for Dispute Resolution

The tenant filed their application for dispute on April 8, 2021, although the 1 Month Notice was served on March 18, 2021. The tenant has the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant states that they are a senior, and was confused as to the time requirements for fee waivers. The tenant states that they required the help of the Residential Tenancy Branch, their son, and an advocate to complete their application.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as “*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure*”.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has provided a compelling reason for the late filing of their application. Under these circumstances, I am allowing the tenant’s application for more time to make their application.

Issues

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

Is the landlord entitled to monetary compensation for monetary loss or money owed?

Are both parties entitled to recover the filing fee for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy began on August 18, 2012. Monthly rent is current set at \$892.06, payable on the first of the month. The landlord collected a security deposit in the amount of \$375.00, which they still hold. The tenant continues to reside in the rental unit.

The landlord served the tenant with the notice to end tenancy dated March 18, 2021 providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
2. The tenant has not paid the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

The landlord provided the following reasons for why they are seeking an Order of Possession on the grounds provided on the 1 Month Notice. The landlord testified that their home insurance underwriter had declined to renew the landlord's insurance coverage due to the unsatisfactory housekeeping inside the unit.

The landlord submitted the correspondence from their insurance provider dating back to January 21, 2021 as well as photos of the rental unit. The letter dated January 21, 2021 confirms that a "home high value appraisal" was performed on October 14, 2020. The letter notes that housekeeping was a concern, and stated the following (bold and underlining by writer of letter).

*"housekeeping inside the dwelling unit **must** improve prior to releasing renewal on April 24, 2021. Improved housekeeping must be maintained on an ongoing basis. Please provide updated interior photos with improved housekeeping by March 24, 2021 for underwriter's review".*

A follow up letter dated March 18, 2021 was received by the landlord stating that the insurance company still had not received the updated photos showing improvement in the housekeeping, and that a lapse notice has been received.

The landlord received the final letter dated April 8, 2021 which states that the insurance company had received the updated photos, and after underwriter's review, there will be no coverage effective April 24, 2021 (12:01 a.m.) "due to unsatisfactory housekeeping" inside the unit.

The landlord testified that the appraisal and inspection was done in October 2020, and despite the ample warning and time for the tenant to remedy the situation by improving the housekeeping inside the rental unit, the tenant has not done so, causing the landlord to be unable to renew their home insurance coverage. The landlord testified that the absence of coverage leaves the landlord's home at significant risk. The landlord was also concerned that in case of a fire, emergency services would have difficulty having safe access to the rental unit considering the condition of the rental unit.

The landlord also noted other concerns such as the unauthorized fish tanks in the rental unit, and tenant's failure to provide a pet damage deposit. The landlord is also seeking a monetary order in the amount of \$750.00 for damage to the rental unit.

The tenant requested cancellation of the 1 Month Notice, and states that the landlord was mean and abusive towards the tenant and tenant's son. The tenant testified that the landlord wanted to end the tenancy in order to increase the monthly rent, and states that they did not authorize any photos to be taken of the rental unit. The tenant testified that it was unfair as they required more time to move their furniture and items to storage, and that they would cooperate if given a second chance to do so, or assist the landlord in obtaining coverage.

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. The tenant filed an application for an extension of time to file their application, which I had granted as noted earlier in this decision. Having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy, and I must now determine whether the landlord had sufficient cause to end the tenancy under the grounds provided on the 1 Month Notice.

I have reviewed the testimony and evidence before me, and I find it undisputed that the landlord's home insurance policy had lapsed and was not renewed after the underwriter had determined that the housekeeping was unsatisfactory in the rental unit. I find that

despite the fact that an inspection was first completed on October 14, 2020, the tenant was given ample time and opportunity to address the matter. I find that the landlord has a duty to mitigate potential risk and losses associated with the rental unit by obtaining and maintain current home insurance for the rental unit, but was unable to do so due to the tenant's failure to address the issue with housekeeping. Despite the tenant's response that they should be given more time to address the issue, I find that the tenant already had ample time to do so, but has not done so. I find that the tenant's actions, specifically the unsatisfactory housekeeping as noted in the correspondence, has put the landlord's property at significant risk and continues to do so. I accept the landlord's testimony and evidence that they currently do not have home insurance coverage, and in case of a fire or situation which would necessitate an insurance claim, the landlord could be faced with staggering losses. The lack of coverage, combined with the state of the rental unit, leaves the landlord extremely vulnerable for significant losses. I am satisfied that the landlord had met the burden of proof to demonstrate that the tenancy should end on the grounds that the tenant has put the landlord's property at significant risk, and accordingly I dismiss the tenant's application to cancel the 1 Month Notice dated March 18, 2021 without leave to reapply. As the tenant was not successful in their application, I also dismiss their application to recover the filing fee without leave to reapply.

Section 55(1) of the *Act* reads as follows:

- 55** (1) 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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, April 30, 2021. In this case, this required the tenant and anyone on the premises to vacate the premises by April 30, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

The landlord also filed a monetary claim for losses associated with damage to the rental unit. Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. As the tenant has not yet vacated the rental unit, I find this portion of the landlord's claim to be premature. Accordingly, I dismiss this claim with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

I allow the landlord to recover the filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$375.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim.

Conclusion

The tenant's entire application is dismissed without leave to reapply. I find that the landlord is entitled to an Order of Possession. I find that the landlord's 1 Month Notice is valid and effective as of April 30, 2021.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim.

The remainder of the landlord's application is dismissed with leave to reapply.

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: August 18, 2021

Residential Tenancy Branch