



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CITY REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC RP FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated April 30, 2021 (1 Month Notice), for repairs to the unit, site or property, and to recover the cost of the filing fee.

The tenant, the spouse of the tenant, an agent for the landlord DG (agent), and the owner of the rental unit, PR (owner) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the email addresses of the parties were confirmed at the outset of the hearing. The decision will be sent by email to both parties.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to set aside the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 1 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application for repairs is dismissed, **with leave to re-apply**.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be set aside?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

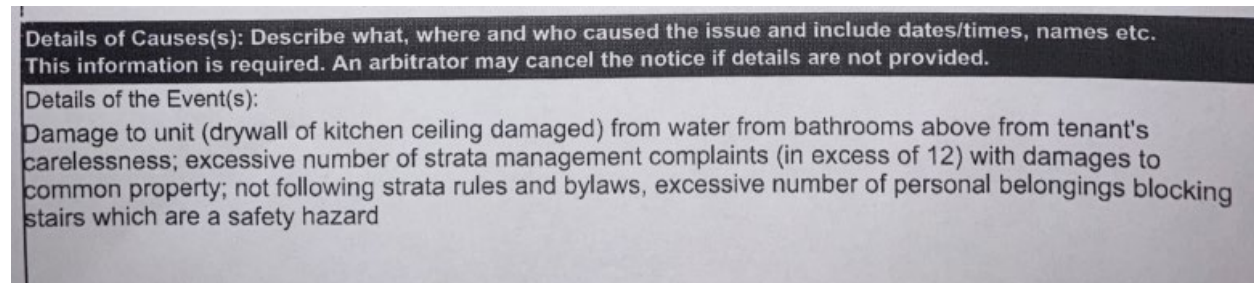
A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 9, 2019 and reverted to a month-to-month tenancy after February 29, 2020. Monthly rent of \$2,100.00 is due on the first day of each month.

The tenant confirmed they received the 1 Month Notice dated April 30, 2021 on April 30, 2021 and that the effective vacancy date was listed as May 31, 2021. The tenant disputed the 1 Month Notice on May 7, 2021, which is within the 10-day timeline provided for under the Act to dispute the 1 Month Notice. The landlord listed the following causes on the 1 Month Notice:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property.

4. Tenant has not done required repairs of damage to the unit/site/property.

The 1 Month Notice states in the Details of Cause(s) section the following:



The landlord testified that they are a licensed realtor as well as a license builder. The landlord alleges that the tenant was careless by letting their bathtub overflow and alleges the leaking downstairs bathroom was caused by overflowing water from the bathtub above. The tenant denied that they have ever let the bathtub overflow and stated that the landlord has yet to arrange for a plumber to attend the rental unit to inspect and repair the water leak that occurred in December 2019, and later leaked again in January 2021 and March 2021.

The landlord testified that drywall tape has separated from the drywall due to the water leak and several videos from the tenant were presented which showed dripping water coming from the ceiling into the lower floor of the home. The landlord claims that no leak was ever discovered but also admitted that the landlord has not called a plumber to date and therefore has no inspection report or other paperwork to support that there is no leak coming from the upstairs bathroom.

The landlord also alleges that the tenant has an excessive number of personal belongings blocking the stairs leading from the ground level to the upper level of the home. The landlord was asked if they had any photo evidence to support this and the landlord confirmed that no photo evidence was submitted. The landlord claims the tenant refused to allow the landlord to take photos of their personal items.

The tenant denied having an excessive number of personal items and stated that the water leak has been an issue since they first moved in and that the landlord has never had a plumber attend to inspect or repair the water leak. The landlord claims that due to other similar units that he manages not having water leaks, that it must be the tenant as without any repair the water stopped leaking. The landlord did not account for the leaks mentioned by the tenant that occurred in January and March of 2021.

The landlord was advised during the hearing that the allegation of “not following strata rules and bylaws” was too vague to support evicting a tenant and that portion was dismissed due to vague details during the hearing which I will address further below.

Although the parties were instructed at the start of the hearing to immediately advise me if another party joined them during the hearing, the landlord made the decision to call the plumber hired by the tenants, A (plumber) without first notifying the undersigned arbitrator. While the landlord was answering questions, the landlord stated that the plumber was on the line already and had been called by the landlord. The plumber was excused from the hearing and the landlord was advised that I could not hear from the plumber as their testimony would be tainted now given that the landlord had already given testimony with the plumber listening to the landlord.

The landlord was asked what the plumber would state as a witness and the landlord stated:

1. The plumber ran the plumbing fixtures and found no leak in December 2019.
2. The baseboards were swollen.

As the tenant did not deny these two statements, the landlord was advised that I did not need to hear from the plumber as a witness and cautioned the landlord not to call anyone else into the hearing.

The plumbers report also reads in part as follows:

Description	Quantity	Rate	Amount
I attended leak investigation to try to determine where leak was coming from, the investigation was inconclusive because we were unable to cut open the ceiling. But what I did notice in both bathroom was the silicone was very old and peeling away, allowing water to seep in behind and create mould. I couldn't determine the exact leak point but again silicone inside and outside the tub and shower was insufficient to do its job properly.	1	\$0.00	\$0.00
Also noted that there are cracks in the grout and it hasn't been resealed in years, which creates a water proof membrane. Resealing grout lines should be done on a yearly basis due to manufacturers Warranty On there product. Which is one year warranty generally. Could be other issues unseen due to drywall. Other possibilities could be cracked abs joint or a screw in pipe that has rusted out. Further investigation is required	1	\$0.00	\$0.00

The landlord also alleges that the tenant has submitted an excessive number of strata management complaints and quoted 12 as the number. When asked to present the dates of the complaints from the tenant to the strata the landlord provided the following dates:

1. June 4, 2019
2. June 17, 2019
3. August 22, 2019

4. April 27, 2020
5. November 30, 2020
6. March 5, 2021
7. April 22, 2021
8. April 28, 2021
9. July 9, 2021

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice on time, which I find the tenant did in this matter, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to provide sufficient evidence to support that the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Water leak – Although the landlord testified that they are a licensed realtor as well as a license builder the landlord did not allege that they were a licensed plumber. At the very least, I would have expected the landlord to have called in a plumber to assess the rental unit for a water leak in December 2019, which the landlord admitted has not been done since the water was reported as leaking. As a result, I find the landlord has not done reasonable due diligence and I find the landlord's allegation that the tenant caused the leak is unfounded based on no supporting evidence from a plumber as the landlord has yet to hire a plumber to inspect the rental unit and determine the cause of water leaks in December 2019, January 2021 and March 2021.

Excessive personal items – Given that the tenant denied having an excessive number of personal items, and without photo or video evidence to support this allegation by the landlord and considering that the landlord has the onus of proof, I find the landlord has failed to meet the burden of proof and I dismiss this allegation due to insufficient evidence.

Not following strata rules and bylaws – As noted above, the landlord was advised during the hearing that the allegation of "not following strata rules and bylaws" was too vague to support evicting a tenant. I find that due to this portion of the 1 Month Notice details being too vague, that I find it would be prejudicial to the tenant as the tenant would be unable to rebut the allegations without first knowing specifically what is being alleged. Some examples of crucial details would include:

- A. What rule or bylaw was violated?
- B. When was the violation?
- C. Who witnessed the violation?
- D. Have any fines been imposed for violating a strata rule or bylaw?

Given the above, I find the landlord has failed to meet the burden of proof for this cause due to the cause being too vague to end a tenancy.

Excessive number of strata complaints - As the 1 Month Notice was not issued until April 30, 2021, I find the landlord is incorrect at claiming there were 12 complaint letters. Based on the testimony of the landlord, I find there were only 8 complaint letters to the strata by the tenant between June 2019 and April 28, 2021, which I find is not excessive. In addition, the 9th complaint was **after** the 1 Month Notice was issued and would not have been considered when the 1 Month Notice was issued on April 30, 2021.

As the landlord has failed to prove all of the causes alleged in the 1 Month Notice, **I set aside** the 1 Month Notice dated April 30, 2021.

I ORDER that the tenancy continues until ended in accordance with the Act.

As the tenant's application had merit, I grant the tenant the recovery of the \$100.00 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee pursuant to section 62(3) of the Act.

Conclusion

The tenant's application is successful.

The 1 Month Notice is cancelled due to being too vague and due to insufficient evidence from the landlord.

The tenancy shall continue until ended in accordance with the Act.

The tenant has been granted a one-time rent reduction of \$100.00 for the filing fee as noted above.

The decision will be emailed to both parties.

I caution the landlord not to issue notices to end a tenancy that are without merit.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 17, 2021

Residential Tenancy Branch