



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHELSEA MANOR APARTMENTS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, CNC, OLC, MNDCT, RP, RR, LRE, PSF, OT, LAT, ERP,
DRI, OPC, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On July 29, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for unpaid rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking more time to cancel that notice pursuant to Section 66 of the *Act*, seeking to cancel a One Month Notice to End Tenancy for Cause (the “*Notice*”) pursuant to Section 47 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking an emergency repair Order pursuant to Section 62 of the *Act*, and seeking to dispute a rent increase pursuant to Section 41 of the *Act*.

On August 3, 2021, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*

The Tenant attended the hearing with E.C. attending as her advocate. R.C., C.M., and G.G. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it

and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Prior to addressing issues regarding service of documents, the Tenant requested an adjournment because she stated that her lawyer was not able to attend the hearing as he was in court. She did not provide any documentary evidence from her counsel to corroborate this statement, she provided vague details about him being retained to represent her, and she was not sure when he would be available to represent her at a future teleconference hearing.

She also requested an adjournment due to the pandemic, the State of Emergency, and the wildfires.

Finally, she requested an adjournment because she stated that she had suffered from a brain injury and her ability to participate in a teleconference hearing was limited. E.C. read from a letter from the Tenant's lawyer dated July 19, 2021, which was not submitted as documentary evidence. This letter confirmed that the Tenant suffered from a brain injury in November 2020; however, there was no information contained within this letter which indicated that the Tenant would not be able to participate in a teleconference. E.C. read out a substantial number of dates that the Tenant attended the hospital for "IV treatments"; however, it was not clear how this was related to the Tenant's brain injury or how this would support the claims that she would be unable to participate in the hearing. The Tenant did not submit any medical documentation to support the position that she currently suffered lasting effects from a brain injury and that this prevented her from participating in the teleconference.

R.C. advised that the Landlord was not aware of her alleged medical history and she opposed the Tenant's request for an adjournment.

When considering these adjournment requests, I find it important to note that the Tenant provided insufficient documentary evidence to support her claims that she was represented by counsel. Furthermore, there was insufficient evidence provided that if she had retained counsel, that this person was unavailable for the hearing. Moreover, even if this hearing was adjourned, she was unaware of when her counsel would even be able to attend a future hearing. Consequently, I was not satisfied that an adjournment should be granted based on the Tenant's submissions.

With respect to the request for an adjournment because of the pandemic, the State of Emergency, or the wildfires, it is not clear to me how any of these matters would prevent the Tenant from being able to participate in the teleconference proceeding. As such, I was not satisfied that an adjournment should be granted based on these submissions.

Finally, regarding the Tenant's request for an adjournment due to her brain injury, while I accept that she may have suffered from this injury in the past, she has provided insufficient medical documentation to support that she currently has lasting effects of this injury and how that would impact her ability to attend the teleconference hearing. In fact, I find it important to note that the Tenant exhibited no difficulties or delays in answering questions directed at her as her responses were immediate. In addition, the Tenant often interjected during the hearing, without being addressed directly, when another party was speaking, which demonstrated that she exhibited no issues following the participants throughout the hearing. The Tenant's behaviour became so prevalent that it was disruptive to the point where it was necessary to pause the hearing to remind all parties about conduct, and how the hearing should proceed.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. I acknowledge that the Tenant claims to suffer from a medical condition that impacts her. However, I do not find that she has provided any medical documentation to corroborate this condition, or a diagnosis that substantiates her inability to represent herself during the teleconference. Moreover, when taking these observations above into consideration, and given that she also had an advocate with her, I was not satisfied that the Tenant had established any grounds that the hearing should have been adjourned based on these submissions.

As this hearing pertained to notices to end the tenancy, I found that adjourning the hearing would have been prejudicial to the Landlord. As such, the Tenant's requests for an adjournment were denied and the hearing proceeded.

The Tenant advised that the Landlord was served the Notice of Hearing package by hand on August 13, 2021 and R.C. confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing package.

The Tenant advised that she was unsure if her evidence was served to the Landlord. R.C. confirmed that the Landlord had received the Tenant's evidence package more than two weeks ago. As this evidence appears to have been served to the Landlord

pursuant to the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Tenant's evidence and will consider it when rendering this Decision.

R.C. advised that the Tenant was served the Notice of Hearing package by hand on August 20, 2021 with a police officer in attendance. However, the Tenant denied receiving this package. As well, R.C. advised that the Tenant was served the Landlord's evidence by hand on August 20, 2021, and the Tenant denied receiving this package as well. The parties were advised that I would reserve judgement about service of this evidence and that the hearing would continue. The Landlord would have to speak to me as if I did not have this evidence before me, and I would make a determination after the hearing on whether or not this evidence would be considered.

As will be noted later, it was evident that the Tenant was intentionally avoiding questions about receiving the notices to end her tenancy, which caused me to doubt the reliability or truthfulness of her submissions. I found this to be similar to her flat-out denial of being served the above packages. Based on the doubts I have about the Tenant's credibility, I find it more likely than not on a balance of probabilities, that the Landlord's Notice of Hearing and evidence packages were duly served to the Tenant. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the notices to end tenancy, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent cancelled?

- Is the Tenant entitled to more time to have this 10 Day Notice to End Tenancy for Unpaid Rent cancelled?
- If the Tenant is unsuccessful in cancelling this notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to have the Landlord's One Month Notice to End Tenancy for Cause cancelled?
- If the Tenant is unsuccessful in cancelling this Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on March 1, 2019, that rent was \$770.00 per month, and that it was due on the first day of each month. A security deposit of \$385.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

R.C. advised that the 10 Day Notice to End Tenancy for Unpaid Rent was posted to the Tenant's door on July 3, 2021. When the Tenant was asked if she received this notice, she stated that she could "not recall" receiving it. It was then noted that she specifically disputed this type of notice on her Application, that she indicated on the Application that she received this notice on July 23, 2021, and that she requested more time to dispute this notice. In response, the Tenant provided vague and evasive answers in an attempt to explain how this would have been possible had she not received this notice.

When assessing her responses to whether or not she received this notice, it is not clear to me why she would have disputed this type of notice or indicated on her Application the specific details of receiving this notice had she not in fact been served it.

Furthermore, she wrote a description of her dispute with respect to this notice in her Application. Moreover, at the start of the hearing, she requested an explanation of which issues would be severed and which issues would be addressed. When it was explained to her that only the two notices to end tenancy would be dealt with during the hearing, she stated that the 10 Day Notice to End Tenancy for Unpaid Rent was no longer an issue as the rent had been paid. In addition, the Tenant submitted a copy of this notice

in her own documentary evidence package, but she could not provide a reasonable explanation for how this was in her possession had she not been served it.

Clearly, in my view, it is apparent that the Tenant was served and had received this notice. What is not clear is why the Tenant was being intentionally untruthful about receiving it. As her answers changed repeatedly about receiving this notice, it was evident that she was being deceptive about this as her responses evolved in an obvious attempt to backtrack on her increasingly inconsistent statements. I find that this caused me to begin to doubt the reliability of the Tenant's submissions.

R.C. stated that the Tenant paid the rent within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent, so the notice was cancelled, and the Landlord was not seeking an Order of Possession on that particular notice.

R.C. then advised that the One Month Notice to End Tenancy for Cause was served to the Tenant by posting it to the Tenant's door on July 23, 2021. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." The Notice indicated that the effective end date of the tenancy was August 31, 2021.

When the Tenant was asked if she received this Notice, she similarly initially stated that she could "not recall" receiving it. When she was asked why she would have specifically disputed this Notice on her Application had she not been served it, she again engaged in the same vague and evasive pattern of attempting to provide an explanation for this. As her responses continually evolved, it was clear that this was a conscious attempt to manipulate the truthfulness of her answers. Given that it does not make sense why she would apply to dispute the Notice had she not even been served it, I find it more likely than not that she had in fact been served this Notice, as R.C. testified. Furthermore, I find that the Tenant's continual untruthfulness caused me to doubt the Tenant's credibility on the whole.

R.C. advised that the Notice was served because of the Tenant's increasingly aggressive behaviour since March 2021 towards the Landlord's staff, other residents, and members of the health authority. She stated that the Landlord attempted to smooth things over and allowed the Tenant the use of a garden in an effort to provide her with an outlet. However, the Tenant eventually neglected this garden and another resident offered to care for it. On June 7, 2021, the Tenant confronted this person as she was

upset with the manner that it was being cared for. The Tenant was assertive and would attempt to take pictures and video in an aggressive manner. R.C. referenced documentary evidence supporting this incident and the resulting warning letter issued to the Tenant.

R.C. advised of another incident on May 15, 2021 when the Tenant approached the gardener and stood by while staring and taking pictures of him. While the gardener did not engage with her, the Tenant eventually asked him to stay six feet away from her. The Tenant continued to confront the gardener aggressively and to record the interaction. She referenced a complaint letter from the gardener that was submitted as documentary evidence.

As well, R.C. advised that on June 28, 2021, a leak was reported to the Landlord by another resident of the building. All the units where this leak could have potentially originated from were checked and no leak was found; however, the Tenant's unit had not yet been checked. C.M. attempted to contact the Tenant in multiple manners in an effort to access the rental unit, but the Tenant did not respond. Given the length of time that elapsed, and the leak being considered an emergency, C.M. elected to enter the rental unit. However, the Tenant had changed the locks without the Landlord's consent, so a crowbar was used to gain access. A leak was not discovered at this time.

On August 1, 2021, the Tenant advised that there was a leak in the garage, and as it is below the Tenant's rental unit, the Landlord advised the Tenant that access to the rental unit was required. The Tenant asked C.M. to wait five minutes, but she then would not allow him to enter, and she became so aggressive that the police were called. Days later, a plumber discovered a leak within the walls of the rental unit; however, the Tenant had prevented a drywaller from entering the rental unit to repair any damage to the walls even though the Landlord provided written notice for entry. As well, the Tenant changed the locks again.

The Tenant initially provided testimony that was unrelated to the reasons the Notice was served. This ranged from complaints that the agents for the Landlord did not follow COVID protocols to her dissatisfaction with how she believed agents for the Landlord breached her rights to quiet enjoyment. With respect to the incident pertaining to the garden, she advised that she paid for the materials that went into the garden and that others refused to contribute to these costs. She stated that the resident actually blocked her path to the garden, that this person was swearing at her, and that she felt threatened.

Regarding the incident with the gardener, she stated that the gardener was continuously outside her door and balcony where it “seems like” he was watering the garden or snipping the bushes “aggressively”. As well, he was using power tools constantly and she suggested that he may be have eavesdropping. She stated that this behaviour is “indirect harassment”.

With respect to the incident about the leak, she advised that a leak was not found initially, that the Landlord did not provide the proper written notice for entry, and that she did not prevent any tradespeople from entering the rental unit. She stated that she did not change the locks, but she had someone provide a key to the Landlord in September 2020 in case the Landlord did not receive a copy from the previous owner of the property.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility.

I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. I note that as determined above, the Tenant's credibility was already in doubt from early in the hearing due to her vague or seemingly evasive testimony about service of the Landlord's notices to end tenancy.

When assessing the totality of the evidence before me, I find that I prefer the Landlord's evidence as it is more consistent, logical, and likely, when weighed on a balance of probabilities, and especially when weighed against the Tenant's inconsistent and varying testimony. In my view, it appears as if the Tenant's actions were unquestionably intentional, unnecessary, and a deliberate attempt to antagonize staff or other residents of the building. I find that the Tenant's portrayal of her interactions is either fabricated or her perception of her interactions is skewed. As I am satisfied that the Tenant's inappropriate and malicious actions are more consistent with the Landlord's evidence, I find that I prefer the Landlord's evidence on the whole.

As the Landlord's Notice is valid, and as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

The effective end date of the tenancy of August 31, 2021 on the One Month Notice to End Tenancy for Cause is changed to the nearest date that complies with the law. Since that effective date has passed, I grant the Order of Possession effective **two days** after service of this Order on the Tenant.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of

Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective **two days** after service of this Order 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: September 15, 2021

Residential Tenancy Branch