



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC, MNDCT, RP, LRE, PSF, DRI, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on May 3, 2021:

- a. to dispute a One Month Notice to End Tenancy for cause (the “One-Month Notice”);
- b. to dispute a 10 Day Notice to End Tenancy for Unpaid Rent;
- c. to ensure the landlord’s compliance with the legislation and/or the tenancy agreement;
- d. for repairs to the rental unit, after contacting the landlord to do so;
- e. for suspension or set conditions on the landlord’s right to enter the rental unit;
- f. for the provision of services or facilities required by the agreement and/or law;
- g. to dispute a rent increase that is above the amount allowed by law;
- h. for compensation for monetary loss or other money owed;
- i. for payback for the cost of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 30, 2021. Both the landlord and the tenants attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, each party confirmed they received the prepared documentary evidence of the other in advance of the hearing date. On this basis, I proceeded with the hearing as scheduled.

Preliminary Matters

On August 6, 2021, the tenants completed an amendment to their initial Application. They provided on the form that they mistakenly indicated they had received a 10 Day Notice to End Tenancy on April 29, 2021. In the hearing, the tenants clarified they did not receive a 10 Day Notice to End Tenancy on this date. Given the amendment and both parties' confirmation, I dismiss this portion of the tenants' Application, without leave to reapply. The more recent notice to end tenancy received by the tenants received no consideration in this hearing; this was not indicated in the tenants' Amendment as being a reason for their Application.

At the outset, I advised both parties of the immediate issue concerning the One Month Notice. The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the landlord. By Rule 6.2, I do not consider the other issues listed above, with the exception of reimbursement of the Application filing fee. By Rule 2.3, I find these issues are unrelated and I amend the tenants' Application to exclude these matters. The tenants have leave to reapply on grounds c. through h. listed above. This means the tenants may file a new and separate application to address these other issues.

Issues to be Decided

Are the tenants entitled to a cancellation the One Month Notice?

If the tenants are unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Are the tenants entitled to recovery of the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, I describe only the evidence and submissions relevant to the issues and findings in this matter herein.

The tenants provided a copy of the One-Month Notice with their Application. This is dated April 29, 2021 for the move-out date of June 1, 2021. The landlord indicates that they served the tenants in person; the tenants confirmed this in the hearing.

The One Month Notice gives the following reasons for service of this document:

- ☐ Tenant has allowed an unreasonable number of occupants in the unit . . .
- ☐ Tenant is repeatedly late paying rent
- ☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- ☐ Tenant has not done required repairs to damage to the unit/site/property/park.
- ☐ Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

The landlord provided details in the required space on the document. This lists water damage to the walls in the unit. Additionally, the landlord provided that the tenants were renting rooms to other people without the landlord's consent; this involved construction additional rooms within the rental unit. Also, the landlord alleged that the tenants had insufficient funds to pay rent and "rent cheques bounce", and they divided the garage into two halves, and used the backyard area "to store garbage."

The landlord spoke to each of these grounds in the hearing:

- The tenants have additional occupants in the rental unit, and this is causing "a great deal of damage". The landlord repaired this damage; invoices for this appear in the landlord's documentary evidence. The landlord presented this invoice to the tenants; however, they did not pay.
- The washing machine was leaking for quite some time, and this caused rotting to walls in the surrounding area.

- Water leaked from the upstairs bathroom due to the manner in which the tenants transport water within that bathroom. This caused damage to the ceiling downstairs.
- The tenants built a ceiling from cardboard – according to the landlord this became a room that did not originally exist in the rental unit. This was to create a living space for someone extra who is living there.
- There are 6 people in total living in the rental unit.
- Several cheques bounced and while the tenants replaced these amounts, this was continuing in the tenancy for quite some time.
- The landlord cleaned the backyard twice at their own expense.

In their documents, the landlord provided pictures showing a ceiling constructed of cardboard and other renovations made without permission. These are makeshift walls and shelving.

The landlord provided a document entitled “Property Damage Report”, sent by a construction company on May 27, 2021. This outlines damage from the leaking washing machine which “has been leaking for a long period of time (at least a few years to be able to cause the rust damage on the machine)”. This caused water damage to surrounding walls, and mildew and algae growing under both machines. In summary: “Main result of damage is neglect and not informing landlord of leaking machines, damages could have been likely avoided.” There are photos attached to the document that show this damage and the report describes all manner of repairs that were undertaken.

The landlord wrote to the tenant on July 12. They forwarded invoices to the tenants showing all listed repairs for “repairs to the walls, baseboards and doors done by the wheelchairs and for the repairs to the laundry room and bathrooms due to the water damage, etc.” These two invoices appear in the landlord’s evidence. While the landlord indicated to the tenants that the repairs were \$14,574.01; the provided receipts add up to \$12,574.13.

In this correspondence of July 12, the landlord noted their last conversation with the tenants. This was where the tenants had disclosed there were 6 people living in the unit. The landlord requested that others leave by the end of July. The landlord concludes: “. . .you are not abiding by the terms of the tenancy agreement and are doing too much damage to the house.”

In the hearing, the tenants replied to various points of the landlord's testimony and evidence:

- the water in the laundry area was because of rain and they could not call the landlord for repairs because it was cold, and it was raining so hard
- the landlord started performing work and repairs to the rental unit without the tenants' consent – these repairs made it inconvenient
- they reiterated that there were only three residents in the rental unit – the landlord has been aware of the exact number of people living there for the entire duration of the tenancy
- they were never late paying rent – they drew attention to their enclosed evidence of bank transactions from 2021

Analysis

The *Act* s. 47 is the provision that deals with “extraordinary damage to a rental unit. . .” and the situation where the tenant “does not repair damage to the rental unit as required by s. 32(3), within a reasonable time.” Additionally, s. 47 refers to “extraordinary damage” caused by a tenant as a reason for the landlord to end the tenancy.

This refers to s. 32(3), which sets out that a tenant must repair damage to the rental unit, where “caused by the actions or neglect of the tenant . . .”

Additionally, s. 47 gives the landlord to end the tenancy where there are an unreasonable number of occupants in a rental unit.

In this hearing, the onus is on the landlord to prove they have cause to end the tenancy. The landlord spoke to these reasons in the hearing. Their evidence included documentation related to extensive repairs undertaken due to water damage.

I find the tenants did not provide an adequate reason on why they did not inform the landlord of the need for repairs stemming from damage in the laundry room. The photos provided by the landlord, and the invoices provided, show the work to remedy this situation was extensive. I find this relates directly to the reasons indicated by the landlord: where the tenant does not repair damage within a reasonable time; and where the tenant has caused extraordinary damage to the rental unit.

This was an ongoing issue in the laundry area that was not responsibly dealt with by the tenants. The tenancy agreement itself specifies: “The tenant must take the necessary steps to repair damage. . . caused by the actions or neglect of the tenant. . .” The tenants did not present a plausible reason why the issue continued to the point where it caused extensive damage. In the hearing the tenants questioned why the landlord continued with repairs that caused interruption to them; however, this does not address the background to why repairs were necessary.

For these reasons, I find the landlord was justified in issuing the One-Month Notice for the grounds indicated: the tenants shirked their duty to repair damage and this caused extensive damage to the rental unit.

Alternatively, I find the evidence shows the tenants constructed makeshift walls and ceilings to accommodate other residents in the rental unit. They did not present compelling evidence to show there was an acceptable number of occupants and did not state clearly who was living there presently. I give more weight to the evidence and testimony of the landlord that there were additional occupants that required alterations to the rental unit. I find there is no other reason for these alterations except for additional occupants.

With reference to the tenancy agreement section 11, I find the testimony of the landlord clear that they had discussed the issue with the tenants in the past. The landlord’s compelling evidence on this point is that they spoke to other individuals who were living in the rental unit; these occupants acted surprised when they learned that the tenants were not the owners or the actual landlord. For these reasons, I find the landlord was also justified in issuing the One-Month Notice.

Given my findings on two reasons for the landlord issuing the One-Month Notice, I find there is no further need for examination of the other issues the landlord raised. Sufficient grounds for the landlord ending the tenancy are in place.

The *Act* s. 55(1) states that if a tenant applies to dispute the landlord’s notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord’s notice is upheld, the landlord must be granted an order of possession if the document complies with all the requirements of s. 52 of the *Act*. On my review, the One-Month Notice here contains all the required elements set out in s. 52.

By this provision, I find the landlord is entitled to an Order of Possession and the tenancy shall end. The tenants’ Application here is dismissed without leave to reapply.

Because they were not successful in their Application, the tenants are not entitled to reimbursement of the Application filing fee from the landlord.

Conclusion

Under s. 55(1) and 55(3) of the *Act*, I grant an Order of Possession effective two days after service of this Order on the tenant. Should the tenants 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 s. 9.1(1) of the *Act*.

Dated: September 3, 2021

Residential Tenancy Branch