



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNC, PSF, MNDCT
Landlord: FFL, OPN, OPC, OL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47; and
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62.

The tenants filed an amendment on July 7, 2021 (the "First Amendment") which clarified that the original application for dispute resolution did not contain a monetary claim.

The tenants filed a second amendment on August 3, 2021 (the "Second Amendment") pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47; and
- a Monetary Order for damage and compensation, pursuant to section 67 of the *Act*.

This hearing also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Cause, pursuant to sections 47 and 55;
- an Order of Possession pursuant to the tenants' written notice to end tenancy;
- an Order of Possession because the rental unit/site is uninhabitable due to unforeseen events or the tenancy agreement is otherwise frustrated; and
- an Order for the return of the filing fee, pursuant to section 72.

Preliminary Issue- Amendment

The tenants' application for dispute resolution lists the owner of the subject rental property (landlord I.G.) as the landlord. The landlord's application for dispute resolution lists landlord I.G.'s agent as the landlord (landlord M.G.).

Landlord M.G., tenant K.M. and the tenants' advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The *Act* defines "landlord" as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement;

I find that both parties correctly named a person who meets the definition of landlord in their respective applications for dispute resolution. As the applications have been crossed, the style of cause for both applications must be the same. Pursuant to section 64 of the *Act*, I amend the landlord's application to also state the owner's name (landlord I.G.). Pursuant to section 64 of the *Act*, I amend the tenants' application to also state the agent's name (landlord M.G.).

Preliminary Issue- Service

Both parties agree that they were served with the other's application for dispute resolution and that the landlords were served with the tenants' amendments. I find that both parties were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the other's application for dispute resolution because service was admitted. I find that the landlords were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenants' amendments because service was admitted.

Both parties agree that the landlords were personally served with the tenants' evidence on or around July 6, 2021. I find that the landlords were served with the tenants' evidence in accordance with section 88 of the *Act*.

Both parties agree that landlord M.G. personally served the tenants with the landlords' evidence on October 10, 2021. The advocate submitted that the tenants did not have time to review and respond to the landlords' late evidence.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The *Rules* define "days" as:

- c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

The landlords were supposed to serve the tenants with the landlords' evidence seven clear days before the hearing, the landlords only served the tenants with their evidence, one clear day before the hearing. The advocate submitted that the tenants did not have time to review and respond to the landlords' evidence. I find that the landlords' evidence was not served on the tenants in accordance with Rule 3.15 and that the inclusion of the landlords' evidence would unreasonably prejudice the tenants who did not have the opportunity to fully review and respond to the landlords' evidence. The landlords' documentary evidence is excluded from consideration.

Preliminary Issue- Severance

The *Residential Tenancy Branch Rules of Procedure* grant 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 hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

Pursuant to the above, I dismiss the following claims, with leave to reapply:

- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62; and
- a Monetary Order for damage and compensation, pursuant to section 67 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
2. Are the landlords entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?
3. Are the landlords entitled to an Order of Possession pursuant to the tenants' written notice to end tenancy of the *Act*?
4. Are the landlords entitled to an Order of Possession because the rental unit/site is uninhabitable due to unforeseen events or the tenancy agreement is otherwise frustrated of the *Act*?
5. Are the landlords entitled to an Order for the return of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the admissible evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in September of 2002 and is currently ongoing. Monthly rent in the amount of \$750.00 is payable on the first day of each month. The tenants live in a basement suite below landlord I.G.

Both parties agree that landlord M.G. personally served the tenants with a One Month Notice to End Tenancy for Cause (the "First One Month Notice") on June 8, 2021. The One Month Notice dated June 1, 2021 was entered into evidence and states the following reasons for ending the tenancy:

- 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;
 - put the landlord's property at significant risk.

Landlord M.G. testified that the First One Month Notice was served on the tenants because the tenants, particularly tenant J.M., have become belligerent and are constantly disturbing landlord I.G. and herself. Landlord M.G. testified that tenant J.M. is frequently drunk and will yell at landlord I.G. and her spouse, calling them names. Landlord M.G. testified that the tenants were previously served a warning letter about their behaviour which has not improved. Tenant K.M. confirmed receipt of the warning letter.

Landlord M.G. testified that tenant J.M. makes sexually inappropriate comment towards herself and has repeatedly told her that he would like to spank her. Landlord M.G. testified that tenant J.M. also tries to inappropriate hug her when she attends at the subject rental property. The above testimony was not disputed by tenant K.M. or the tenants' advocate.

Landlord M.G. testified that on May 29, 2021 landlord I.G. was doing yard work and tenant J.M. offered her the compost can, but the landlord I.G. declined as she did not need it at that time. Landlord M.G. testified that on May 30, 2021 landlord I.G. asked the tenants for the compost bin and they refused. Landlord I.G. then opened the gate to the tenants' area and proceeded towards the compost can. Landlord M.G. testified that the tenants then became extremely aggressive and called landlord I.G. names. Landlord M.G. testified that the tenants then began to mock landlord I.G.'s husband who suffers from epilepsy and is blind. Landlord M.G. testified that landlord I.G. called her in tears about the incident and told landlord M.G. that she felt cornered and trapped by the tenants.

The advocate submitted that the above altercation between the parties was equally belligerent on both sides and would not have occurred if the landlords had provided proper 24 hour written notice of entry.

Both parties agree that landlord M.G. personally served the tenants with a second One Month Notice to End Tenancy for Cause (the “Second One Month Notice”). The Second One Month Notice dated July 30, 2021 was entered into evidence. Neither party could recall the date the Second One Month Notice was served on the tenants; however, the tenants filed to dispute it on August 3, 2021.

The Second One Month Notice stated the following reasons for ending the tenancy:

- Rental unit/site must be vacated to comply with a government order.

Landlord M.G. testified that landlord I.G. received a letter from the City stating that the subject rental property is not a legal suite and that landlord I.G. must either decommission the suite or bring it up to code. Landlord M.G. testified that landlord I.G. has applied for a building permit to bring the secondary suite up to code but the required repairs might be cost prohibitive.

The tenants entered into evidence a letter from the City to landlord I.G. confirming Landlord M.G.’s above testimony.

The advocate submitted that since the landlords have applied for a building permit it sounds like the landlords have chosen to upgrade the suite, not decommission it and so the tenants do not have to move out. The advocate submitted that if the landlords wish to evict the tenants for renovation or repair they must serve the tenants with a section 49 notice to end tenancy.

Analysis

Based on the testimony of both parties, I find that landlord M.G. personally served the tenants with the First One Month Notice on June 8, 2021. Upon review of the First One Month Notice I find that it conforms to the form and content requirements of section 52 of the *Act*.

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has

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

I accept landlord M.G.'s undisputed testimony that tenant J.M. is frequently drunk and has tried to inappropriately hug her and has repeatedly told her that he would like to spank her. I find that tenant J.M.'s conduct constitutes sexual harassment of landlord M.G. I find that there are no circumstances in which it is appropriate for tenant J.M. to tell landlord M.G. that he would like to spank her. I find that tenant J.M.'s sexual harassment of landlord M.G. has significantly interfered with and unreasonably disturbed Landlord M.G., contrary to section 47(1)(d)(i) of the *Act*. Pursuant to my above findings, the First One Month Notice is upheld and the tenants' application to cancel the One Month Notice is dismissed without leave to reapply.

Section 55 of the *Act* states that 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.

I find that since the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice was dismissed, the landlords are entitled to an Order of Possession effective at 1:00 p.m. on October 31, 2021.

As I have determined that the landlords are entitled to an Order of Possession pursuant to the First One Month Notice I find it unnecessary to determine if the landlords are entitled to an Order of Possession pursuant to the Second Two Month Notice or for any other reason.

I find that because the landlords were successful in this application for dispute resolution, the landlords are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Both parties confirmed their email addresses for service of this decision and orders.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on October 31, 2021**, which should be served on the tenants. 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.

I issue a Monetary Order to the landlords in the amount of \$100.00.

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 13, 2021

Residential Tenancy Branch