



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

The Tenant seeks the following relief:

- 1) More time to dispute the One-Month Notice to End Tenancy signed May 5, 2021 pursuant to s. 66 of the *Residential Tenancy Act* (the “Act”); and
- 2) If more time is granted, that the One-Month Notice to End Tenancy signed May 5, 2021 be cancelled pursuant to s. 47 of the *Act*.

G.E. appeared on his own behalf as Tenant. He was assisted by B.B., who provided no evidence at the hearing. G.E. was represented by P.M., articling student. S.P. appeared as supervisor to P.M. and assisted P.M. in his submissions. C.R. appeared as agent for the Landlord.

The Landlord advises having served the One-Month Notice to End Tenancy signed May 5, 2021 by way of posting it to the Tenant’s door on May 6, 2021. The Landlord provided a proof of service form in which a witness confirmed that C.R., as agent for the Landlord, served the Notice to End Tenancy on the Tenant. The Tenant was unable to provide a specific date upon which he acknowledged receipt of the Notice to End Tenancy. I find that the Notice to End Tenancy signed May 6, 2021 was served in accordance with s. 88 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the notice on May 9, 2021.

The Tenant was unable to provide specific response to how and when they served the Notice of Dispute Resolution and evidence on the Landlord. A registered mail receipt dated July 15, 2021 was provided in the Tenant’s evidence package. The Landlord did acknowledge receipt of the Tenant’s application materials. I find that the Landlord was sufficiently served with the Notice of Dispute Resolution and evidence from the Tenant pursuant to s. 71(2)(b) of the *Act*.

The Landlord advised having served the Tenant with responding evidence by personally delivering it to the Tenant on October 13, 2021 and by delivering the same evidence package to the Tenant's case worker on the same date. The Tenant acknowledged receipt of the Landlord's evidence package. I find that the Landlord served their responding evidence on October 13, 2021 in accordance with s. 89 of the *Act*.

Preliminary Issue – Tenant's Request for More Time to Dispute the Notice to End Tenancy

The Tenant applied to dispute the One-Month Notice to End Tenancy signed May 5, 2021 on June 23, 2021. Pursuant to s. 47(4) of the *Act*, a tenant must apply to dispute a one-month notice within 10-days of receiving it from the Landlord. In this case, I deem the Tenant to have been served on May 9, 2021, which means the Tenant had until May 19, 2021 to dispute the notice. He did not.

The Tenant asks that I exercise my discretion under s. 66 of the *Act* granting him more time to dispute the notice. Section 66 provides that the director may extend a time limit established by the Act only in exceptional circumstances. Policy Guideline 24 states the following with respect to the application of s. 66:

For an application to be accepted after the time limit, the applicant must show they:

- did not willfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

Policy Guideline 36 provides further guidance on what may constitute exceptional circumstances, which sets out that:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court

noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The Tenant argues that he has dyslexia and has a limited ability to read. The Tenant, who has the assistance of a case worker, is diagnosed with schizophrenia. A letter from his case worker dated June 21, 2021 confirms this diagnosis and the Tenant's dyslexia. It mentions that he has limited ability to read, write, or respond to formal notices, reads at a Grade 2 Level, and is unable to navigate public transportation due to his neurodevelopmental barriers.

The Tenant indicates that after he received the Notice to End Tenancy, he gave it to his stepfather, who is the co-signer for the Tenant in the tenancy agreement. Apparently, the Tenant had a falling out with his stepfather and nothing was done with the notice.

The Landlord, assuming the Tenant had accepted the end of the tenancy, issued a move-out letter to the Tenant on or about June 14, 2021. The Tenant's caseworker advises in her letter that they learnt of the notice on June 16, 2021 after receiving this letter. It was further submitted that there has been turnover in the Tenant's care team at the same time the notice was issued such that the notice fell through the cracks between new and outgoing staff members.

I am inclined to grant the Tenant more time to dispute the notice. Based on the parties' submissions at the hearing, it is undisputed that the Tenant has significant mental health concerns. I find that the Tenant's circumstances are exceptional and the reason nothing was done within the proscribed time limit were beyond the Tenant's control. The lack of continuity in the Tenant's care team, his falling out with his stepfather, as well as his learning disabilities have all contributed to a set of exceptional circumstances that were outside the control of the Tenant. I am concerned that the Tenant's dyslexia and reading abilities may have contributed to the Tenant not appreciating the timelines imposed by s. 47 and the consequences of failing to meet the 10-day dispute timeline. Once his care team became aware of the notice on June 16, 2021, they took immediate action to dispute the notice.

I find that exceptional circumstances exist to justify the extension of the time limit imposed by s. 47(4) and that the Tenant applied to dispute the notice before the effective date of June 30, 2021. Accordingly, I grant the Tenant's request for more time to dispute the Notice to End Tenancy signed May 5, 2021.

Issue(s) to be Decided

- 1) Whether the One-Month Notice to End Tenancy signed May 5, 2021 should be cancelled?
- 2) If not, is the Landlord entitled to an order for possession pursuant to s. 55 of the *Act*?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord advises that the tenancy began on January 1, 2019. Two tenancy agreements were submitted by the parties: one beginning January 1, 2019 and the other beginning on March 1, 2019. The Landlord advises that the second agreement was signed due to the first one being a fixed two-month tenancy and the parties signed the second tenancy agreement after the first tenancy ended on February 28, 2019. The tenancy agreement indicates a security deposit of \$447.50 was paid by the Tenant. Rent was initially \$895.00 due on the first day of each month but has since increased to \$940.00 per month.

The residential property appears to be a multi-unit rental building.

The Landlord issued a One-Month Notice to End Tenancy by posting it to the Tenant's door on May 6, 2021. The Notice to End Tenancy was issued on the following grounds:

- The tenant had:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- The tenant had engaged in illegal activity that has or was likely to adversely affect the quiet enjoyment, security or physical well-being of another occupant or the landlord.
- The tenant had engaged in illegal activity that has or was likely to adversely jeopardize the lawful right or interests of another occupant or the landlord.

- The tenant had breached a material term of the tenancy agreement and did not correct his behaviour within a reasonable time after being provided written notice to do so.

The Landlord did not make submissions on the illegal activity undertaken by the Tenant which gave rise to the Notice to End Tenancy. C.R., as agent for the Landlord, indicates his own personal fear in interacting with the Tenant.

The Landlord indicates that the Tenant had had issues within the residential property for some time but that the Landlord preferred to deal with these informally. This changed in the fall of 2020 when the Landlord issued a warning letter to the Tenant on October 2, 2021 to stop smoking on the residential property as it was in contravention with the tenancy agreement. The Landlord drew my attention to clause 43 of the tenancy agreement, which is a general prohibition on the smoking or vaping of tobacco, cannabis, and other combustible materials on the residential property or within the rental unit. The Tenant initialled beside the no smoking clause.

An email from one of the building's occupants provides a list of dates in which they have smelt cigarette smoke from within the Tenant's rental unit since March 2020. The Landlord provides pictures of the Tenant smoking what appears to be a cannabis bong at the exterior of the residential property.

Other issues of concern began in December 2020. The Landlord indicated that from mid-December 2020 to early January 2021 they received several complaints with respect to the Tenant.

On December 21, 2020, the Tenant was reportedly knocking on the door of another occupant's rental unit. The occupant of the rental unit emailed C.R. on December 21, 2020 to discuss this incident in which states the following:

I have been having problems with my neighbour [Tenant] who currently resides in [Address]. He has been knocking on our doors consistently throughout the day and night. Whenever we leave the apartment he is there waiting outside his door. It makes me feel uncomfortable to the point where I am scared to be home alone. He makes loud noises through the night and we have asked him to stop numerous times to no avail. I have had the last straw when he came knocking on my door at 7 am this morning to say that he has filed a complaint against us. He was yelling at me saying how he is a "government worker and that he owns the

building and will have us evicted by January 14” We have been nothing but kind to him. It’s gotten to the point where we are thinking of filing a harassment report.

The Landlord indicates that the Tenant has represented to others that he is the building’s owner and has otherwise disturbed tradespeople that attended the residential property on behalf of the Landlord. These include incidents in December 2020 where the Tenant was watching a painter and electrician who were working in a common area of the building. Another incident took place in January 2021 where the Tenant grabbed a cleaner at the property, which prompted the police to attend the residential property.

On March 3, 2021, the Landlord provided the Tenant with a warning letter with respect to three ongoing issues: smoking at the residential property, disturbing the quiet enjoyment of other occupants, and harassing tradespeople and workers at the residential property. The letter mentions an incident reported to the Landlord on February 24, 2021 where the Tenant allegedly harassed an occupant of the building and spat on the door of the other occupant. There is also a generalized complaint of loud noise and yelling coming from within the rental unit. The letter draws the Tenant’s attention to clause 17 of the tenancy agreement, which is a general clause requiring the Tenant to respect other occupant’s right to quiet enjoyment and general quiet hours between 10:00 PM and 9:00 AM. The letter ends with a warning further conduct of the nature complained of would result in a One-Month Notice to End Tenancy being issued.

The next incident took place on April 28, 2021 when the Landlord received a complaint that the Tenant was doing laundry at 4:30 AM and loud talking within the laundry room. An email from an occupant made on April 28, 2021 at 4:50 AM indicates that after going down to the laundry room to ask that the Tenant keep his voice down, the Tenant muttered “fuck off” and continued to speak loudly which kept the occupant awake. The other occupant did not wish to pursue the issue themselves as they did not feel safe in doing so.

As noted above, following these incidents, the Landlord issued the One-Month Notice to End Tenancy on May 6, 2021.

The Tenant denies overwatching or interacting with tradespeople. He acknowledges saying hello and denies doing anything else. He denies touching the tradespeople as alleged.

The Tenant further indicates that the incident of December 21, 2021 in which he knocked on the door of the other occupant's rental unit was because he had observed smoke coming from the unit. The Tenant alleges that the other occupant smokes "crack" and believed the other occupant to have been doing so on December 21, 2021.

The Tenant alleges that C.R. calls himself the "judge" for the Landlord and further alleges that C.R. had admitted to the Tenant that he smokes "crack".

The Tenant acknowledges the incident of April 28, 2021 took place. He argues that the occupant in question could not have heard him while he was in the laundry room and that he was sorry about making the noise. The Tenant submits that he is taking his medication daily at a nearby pharmacy and has adequate supports to ensure that his mental health concerns are well managed.

Counsel for the Tenant argues that the Landlord has an obligation under the BC Human Rights Code to provide reasonable accommodation to the Tenant's illness up to the point of undue hardship. Tenant's counsel submits that the notice ought to be cancelled on the basis of the Landlord's obligation to accommodate the Tenant and due to the fact that the Tenant is managing his health as per the recommendations of his care team.

The Landlord cites the Tenant's recent arrest at the residential property, which took place on September 10, 2021, as further proof of the Tenant's disruptive behaviour. The Tenant acknowledges the incident but indicates that it was not in relation to interactions between he and other occupants and was due to the fallout between he and his stepfather.

Another letter dated September 29, 2021 from the same tenant who interacted with the Tenant on December 21, 2021 provides a series of concerns and allegations. The tenant indicates that the Tenant makes loud noises and yells at all hours of the night, which is claimed to keep them awake and has prompted complaints to the police and the Landlord. The letter further states that the Tenant has told the tenant "Fuck you bitch, I will get you evicted." The Tenant is further alleged to have spat on the other tenant's door.

The Tenant denies disturbing other residents within the residential property.

Analysis

The Tenant applies to cancel a One-Month Notice to End Tenancy signed on May 5, 2021.

Pursuant to s. 47, a landlord may end a tenancy with cause after issuing notice effective no earlier than one-month after it is received by the tenant and the day before the rent is due as per the tenancy agreement. As advised at the hearing and in accordance with Rule 6.6 of the Rules of Procedure, it is the Landlord's obligation to prove that the notice was issued in accordance with the *Act*.

I find that the One-Month Notice to End Tenancy signed May 5, 2021 complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

The Landlord cites various grounds for issuing the Notice to End Tenancy, which revolve around the disturbances to other occupants, tradespeople, and smoking at the residential property.

The Landlord submits detailed letters from other occupants indicating their interactions with the Tenant, including incidents in which the Tenant spat on their door, yelled at them, told them to "fuck off" and otherwise disturb the peace and quiet of the property. I am particularly concerned with the incidents of December 21, 2020 and April 28, 2021. On the first occasion, the Tenant appears to have continued to knock on the other occupant's door such that it induced fear. The second instance involved the Tenant making noise at 4:30 AM and when asked to address the noise by another occupant, told them to "fuck off" and persisted in making noise. The second occupant cites a fear of the Tenant.

I am not persuaded by the Tenant's rebuttal. The Tenant acknowledges knocking on the other occupant's door on December 21, 2020 but asserts doing so on the basis that the occupant smokes "crack" and that he witnessed smoke coming from the rental unit. He further alleges the Landlord smokes "crack". I do not believe that either individual smokes "crack." I find that the incident of December 21, 2020 was an unreasonable disturbance of the other occupant's right to quiet enjoyment.

I accept that the events of April 28, 2021 took place as described by the occupant in their email of April 28, 2021. The Tenant acknowledges doing laundry at that early hour and attempted to minimize the disturbance by asserting that the other occupant could not have heard them from their unit. The Tenant then mentioned that he was sorry for the disturbance. The incident of April 28, 2021 took place a short time after being issued the warning letter of March 3, 2021, which ought to have placed the Tenant on notice that there were serious concerns with respect to his behaviour at the residential property. On its own, the events of April 28, 2021 may seem of a trifling nature, however, I accept there is a pattern of disturbances within the residential property caused by the Tenant which justified the warning of March 3, 2021 and, ultimately, the Notice to End Tenancy signed on May 5, 2021.

Tenant's counsel argues that the Landlord has an obligation to accommodate the Tenant up to the point of undue hardship pursuant to the BC Human Rights Code. I am not able to apply the BC Human Rights Code as that is outside the Director's jurisdiction under the *Act*. Further, *Act* and the Regulations are silent with respect to considerations of a Landlord's obligations under the BC Human Rights Code, which the proper forum would be the BC Human Rights Tribunal.

Furthermore, the Landlord has an obligation to protect the rights of other tenants within the residential property, who have a right to the quiet enjoyment of their rental units free from fear of other tenants.

I find that the Tenant has unreasonably disturbed other occupants at the residential property and that the Landlord has made out that the grounds set out under s. 47(1)(d)(i) of the *Act*. Accordingly, I dismiss the Tenant's application to cancel the One-Month Notice to End Tenancy signed May 5, 2021.

Section 55(1) provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As the Tenant's application is dismissed and the notice complies with s. 52, I therefore must grant an order for possession.

Tenant's counsel asks that if an order for possession is issued, I delay its enforcement due to the circumstances of the Tenant and the risk that he become homeless. I have discretion under s. 55 to set the date upon which an order for possession is effective and chose to exercise it given the risks highlighted by the Tenant's caseworker in their

letter of June 21, 2021. I grant an order for possession to take effect on November 12, 2021.

Conclusion

I grant the Tenant more time to dispute the Notice to End Tenancy signed May 5, 2021 pursuant to s. 66 of the *Act*.

I dismiss the Tenant's application to cancel the Notice to End Tenancy and grant the Landlord an order for possession pursuant to s. 55. The Tenant shall give vacant possession of the residential unit to the Landlord no later than 1:00 PM on November 12, 2021.

It is the Landlord's obligation to serve a copy of the order on the Tenant. If the Tenant does not comply with the order for possession, it may be by the Landlord filed with the Supreme Court of British Columbia 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 26, 2021

Residential Tenancy Branch