



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUGH & MCKINNON REALTY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR, OLC, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated July 12, 2021 ("1 Month Notice"), pursuant to section 47;
- an order allowing the tenant to reduce rent of \$5,950.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- a monetary order of \$300.00 for compensation under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

The landlord's three agents, "landlord DD," "landlord BP," and "landlord MH," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 91 minutes from 11:00 a.m. to 12:31 p.m.

Landlord DD confirmed that she and landlord BP are property managers and landlord MH is their assistant, all employed by the landlord company ("landlord") named in this application. She said that all three agents had permission to represent the landlord and the owner of the rental unit. She stated that the landlord manages the rental unit on behalf of the owner, which is a City. All three landlord agents confirmed their names and spelling. Landlord DD confirmed the rental unit address and provided an email for me to send a copy of my decision to the landlord after the hearing is over. Landlord MH did not testify at this hearing. The tenant confirmed her name and spelling and provided an email address for me to send a copy of my decision to her after the hearing is over.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). The landlord’s three agents and the tenant all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, as well as the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

The tenant confirmed that she wanted to proceed with this hearing, she did not want to settle this application, and she wanted me to make a decision. I cautioned the tenant that her tenancy could end with a 2-day order of possession, if I upheld the landlord’s 1 Month Notice. The tenant stated that she did not want to negotiate or settle with the landlord and she was prepared to accept the consequences of this decision, even if a 2-day order of possession was issued against her.

Landlord DD confirmed receipt of the tenant’s application for dispute resolution hearing package and amendments. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant’s application and amendments.

Landlord DD stated that she served the tenant with the landlord’s 1 Month Notice on July 12, 2021, both by email and registered mail. The tenant confirmed receipt of the landlord’s 1 Month Notice on July 12, 2021, via email. She said that she could not remember the exact date that she received the copy by mail but thinks it might have been July 15, 2021. Both parties agreed that the notice indicates an effective move-out date of August 31, 2021. In accordance with sections 88 and 90 of the *Act* and section 43 of the *Regulation*, I find that the tenant was duly served with the landlord’s 1 Month Notice on July 12, 2021.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may

be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout this hearing, the tenant was angry, upset, and argumentative. The tenant repeatedly interrupted me, made inappropriate comments towards me, and argued with me.

The tenant attempted multiple times to instruct me on what the law was and how to conduct this hearing. She repeatedly told me that I was required to deal with her entire application, including her amendments adding monetary claims. I informed the tenant that her monetary claims were not urgent, priority issues, compared to her main application to cancel the 1 Month Notice, which was an urgent, priority hearing issue, for an order of possession. I notified her that her monetary claims could be severed, as per Rule 2.3 of the RTB *Rules* and would only be dealt with if there was time permitting in this hearing. The tenant repeatedly argued with me, insisting that “fairness” required her entire application to be heard at one time in this hearing.

I repeatedly explained the law, *Rules*, and burden of proof to the tenant throughout this hearing. I informed her that I could not give legal advice. I notified her that I was conducting the hearing as the Arbitrator, according to the law and the *Rules*, and that she could not instruct me on how to do so.

The tenant told me to evict the upstairs occupants in the same house, and repeatedly asked me if she had the right to be angry at them. She stated that the Arbitrator who conducted her previous RTB hearing, did not listen to her and told her that the upstairs occupants had a right to be angry at her. She repeatedly questioned me as to whether she had a right to be angry at them. I informed the tenant that I was not required to determine whether she had a right to be angry at the upstairs occupants, as that was not relevant to this proceeding. The tenant repeatedly argued with me about this. I notified her that I could not issue any orders of possession against the upstairs occupants because they were not part of this application or proceeding. The tenant repeatedly argued with me about this.

I repeatedly informed the tenant during this hearing, that each party was to speak when it was their turn, as directed by me, one at a time. I notified her that this was required so that each party had a chance to speak, present their submissions, respond to the other party, and so that I could hear when they were talking. I notified her that I could not hear properly when two or more people were speaking at one time.

The tenant did not have all of her application paperwork in front of her during this hearing. I gave the tenant extra and ample time during this hearing to locate her paperwork, including the 1 Month Notice, her application for dispute resolution and details, and her documentary evidence.

I repeatedly cautioned the tenant about her behaviour, but she continued interrupting me, arguing with me, and making inappropriate comments towards me. However, I allowed the tenant to attend the full hearing, despite her inappropriate behaviour, in order to allow her to present her application and respond to the landlord's evidence. This hearing lasted 91 minutes because of the tenant's repeated arguments and inappropriate behaviour.

Preliminary Issue – Tenant's Application for an Order to Comply and Monetary Compensation

This tenancy is ending, as noted below. Therefore, the tenant's application for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement is dismissed without leave to reapply. This relief is only related to an ongoing tenancy.

The tenant's application for a monetary order of \$300.00 to replace her broken cellular phone is dismissed without leave to reapply. Both parties agreed at this hearing that one of the upstairs occupants broke the tenant's phone, not the landlord. The tenant claimed that the landlord let it happen, even though she agreed that the landlord was not present and did not see it happen.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act, Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenant failed to provide sufficient evidence that the landlord through its actions or neglect, caused the tenant's cellular phone to break, as required by part 2 of the above test. I find that the landlord was not present, did not see it happen, did not encourage it to happen, and did not tell anyone to break the tenant's cellular phone.

I also find that the tenant failed part 3 of the above test. I find that the tenant did not provide sufficient evidence of the \$300.00 amount that she is claiming. She submitted a screen shot photograph of a cellular phone that she found online for \$246.47. She agreed that she did not purchase this phone. She said that she did not know when she would make a purchase. She claimed that she was using an old phone right now from 2011, 2013 or 2014.

Preliminary Issue – *Res Judicata* Regarding Tenant's Rent Reduction Claim

The tenant's application for a rent reduction of \$5,950.00 is dismissed without leave to reapply. This claim is *res judicata*, meaning it has already been decided at a previous RTB hearing. I also find that the tenant did not establish any new details after the previous hearing to add any further claims or amounts.

During this hearing, both parties agreed that they attended a previous RTB hearing on July 22, 2021, after which a decision, dated July 28, 2021, was issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. Both parties agreed that the tenant's claim for an order for quiet enjoyment and a rent reduction were dismissed without leave to reapply at that hearing. The tenant agreed that her review of the previous RTB decision, filed on October 9, 2021, was dismissed by a different Arbitrator on October 14, 2021. The same file number is associated with the review decision.

The tenant agreed that in the application details on the online RTB website, she stated the following regarding her rent reduction claim in this application. The names of the upstairs occupants ("R" and "T"), the tenant's witness "M," and the previous RTB file number (as noted on the cover page of this decision) have been redacted by me below, to maintain confidentiality, as required. My emphasis is added below:

"I lost quiet enjoyment for about 15 months starting from April 2020 to now.
I have submitted evidence of that in the dispute no. [previous RTB hearing file number]. The video clips file names Apr-02-2020 [R] swearing, Feb-02-2021 – [T] [R] swear and smoke, May-22-2021 – [R] swearing and my next house

*neighbour, [M] **testimony of the verbal abuse as ongoing from Aug 2020 to present July 2021.** [M] is willing to give verbal testimony by telephone as well."*

The Arbitrator noted the following at pages 6 and 7 of the previous RTB decision (my emphasis added):

*Regarding the Tenant's claim of a loss of quiet enjoyment, I find that the Tenant was unable to present her case adequately and could not explain the nature of her complaints fully. From what I understood, it was her belief that the manner with which the upstairs tenants spoke to her was inappropriate, and she considered this to be verbal assault. However, when reviewing the totality of the evidence before me, I do not find that this is necessarily an accurate portrayal of the situation. While I accept that the upstairs tenants appear combative, belligerent, and inappropriate, **it is apparent to me from the Tenant's own evidence that the upstairs tenants are reacting in this manner because they are constantly confronted by the Tenant about issues that the Tenant is not happy with.***

It is incumbent on people that share a property to work together peacefully to solve any issues between them. If this is not possible, and there are contraventions of the Act, then one of the parties should bring the issues up to the Landlord's attention to investigate and/or mediate the situation. However, it is still up to the parties to work together in a mature manner to resolve any personal differences that they may have with each other.

In the circumstances described before me, it is not clear what specific breaches of the Act have been committed by the upstairs tenants. However, it is evident that it is more likely than not that both tenants of the rental property have been having difficulty living together and have been antagonistic towards each other, instead of attempting to live in a shared property amicably.

*While I have little doubt that the upstairs tenants are behaving in a manner that is detrimental to their tenancy, **I am satisfied that the Tenant is also acting in a manner that is jeopardizing her tenancy as well. This is evident in the scenario described by the Tenant when she confronted the upstairs tenants around midnight on April 2, 2020 about an issue with the common area gate.** Common sense and ordinary human experience would dictate that approaching the upstairs tenants this late at night surely would have likely elicited a negative reaction, especially given the fact that the **Tenant was also***

recording this interaction with a camera. There is no reason that the Tenant could not have approached the upstairs tenants to address this issue at a more reasonable hour in the day, and in a less confrontational manner.

When reviewing the videos submitted by the Tenant, I find it important to note that such evidence can support what the Tenant is alleging. However, it can also reveal other aspects of interactions between the parties that have not been considered by the Tenant. While it is the Tenant's belief that these videos depict the upstairs tenants' conduct and behaviour, **I also find it reasonable that they are acting in this manner as they are constantly confronted by the Tenant with her camera about whatever issues are bothering her.** Based on the number of videos submitted, and of the content within, **I am satisfied that the manner with which the Tenant approaches the upstairs tenants, to bring issues of concern to their attention, is not conducive to any positive problem solving between the parties. Rather, the Tenant is elevating the tension between the parties by attempting to deal with the situations in this manner.**

As I am satisfied that the Tenant is at least partially responsible for the discord between the tenants, I do not find that she has established a claim of a loss of quiet enjoyment of the rental unit. Furthermore, I do not find that she is entitled to a rent reduction for a situation that she is partly responsible for creating and exacerbating. Ultimately, I am not satisfied that the Tenant has sufficiently established her position and as a result, I dismiss her claims in their entirety.

During this hearing, the tenant confirmed that she is seeking a rent reduction from April 2020 to July 2021, a period of 15 months. She indicated the previous RTB file number, as a reference in her online application details. She provided testimony regarding the same events and issues, as noted above and in the previous RTB decision. I find that the tenant's rent reduction claim has already been dealt with at the previous RTB hearing, as noted above in the Arbitrator's decision. Therefore, it cannot be dealt with again, since it is *res judicata*.

During this hearing, the tenant stated that she was seeking a further rent reduction claim after the last hearing in July 2021, until now. The tenant did not indicate any new amounts or information in her application, amendments, or at this hearing. I find that the tenant has not established any new details or information since the previous hearing on July 22, 2021, to establish a further claim for a rent reduction.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 1, 2019. Monthly rent in the current amount of \$700.00 is payable on the first day of each month. No security or pet damage deposits were paid by the tenant. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is the basement suite of a house, where other occupants live on the upper floor of the same house.

Both parties agreed that the landlord issued the 1 Month Notice to the tenant for the following two reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.*

Landlord DD testified regarding the following facts. This has been ongoing for too long, the landlord cannot make this go away, or make anyone happy. The landlord wants to close up this unit and not rent it again. There has been an ongoing dispute between the upstairs occupants and the tenant. Landlord BP has been accused of stealing by the tenant, so landlord DD had to take over to resolve the situation. Landlord DD took over and has been accused of issues by the tenant. There have been police files and the tenant had issues with the landlord's inspectors and contractors. The landlord does not know what to do. The tenant will not comply with anything. There have been problems with rodents and the compost at the rental unit. The tenant has engaged in

“harassment” of all three landlord agents that appeared at this hearing. The previous RTB hearing issues have continued and that file number is indicated on the landlord’s 1 Month Notice details of cause section.

Landlord BP testified regarding the following facts. He manages the upstairs occupants. On November 1, 2021, the upstairs occupants provided a letter to the landlord saying they were being harassed videotaped, and the tenant was peering in their window. The previous RTB hearing discussed the fact that the tenant was looking in the window of the upstairs occupants at midnight. There are concerns regarding the compost and garbage at the rental property. One of the doctors of the upstairs occupants provided a letter, where it states that the tenant has been causing stress and anxiety for the occupant. The tenant would record the upstairs occupant on video at times and the police were called. Different people have called the police against the tenant. The tenant is constantly videotaping the upstairs occupants, including in the common area of the laundry room, where the tenant waved her hand inside the door and was videotaping the occupant. The police corporal told the tenant to stop videotaping, but the tenant will not listen. The tenant is constantly “agonizing” people, and this issue cannot be worked out. The landlord’s inspectors and contractors cannot enter the tenant’s rental unit. The City owns the rental unit, contacted the tenant, offered two months’ free rent to her, and she rejected it. The upstairs occupants want to live peacefully. The tenant has caused problems for the upstairs occupants, the landlord’s contractors and inspectors, the owner, and the landlord’s management. The landlord’s agents have tried to be polite and respectful to the tenant in emails and the tenant has been disrespectful towards them. Anything shared with the tenant does not work.

The tenant testified regarding the following facts. Some of the information provided by the landlord during this hearing is not true. The tenant only received one email from the landlord. It is “clear” who is the “harassing party.” The upstairs occupants yell and use obscene language against the tenant, including the “F word,” for no reason. The tenant provided video clips of this behavior. One of the videos is from April 2. The tenant’s utilities are included in her rent, one of the upstairs occupants keeps telling the tenant that he is paying for her hydro and utility bills, but he should work out this issue with the landlord to only pay for his portion. The tenant was angry and so are the upstairs occupants, so it was both sides. The tenant works seven days per week and comes home just to sleep. The accusations from the landlord are not true. The tenant emptied the compost on July 6. It is not true what the landlord said about emails going back and forth, since the tenant only received two emails.

The tenant stated the following facts. She filmed videos of the upstairs occupants because it is “required” as evidence by the RTB. She submitted these videos at the previous RTB hearing as well. The Arbitrator who conducted the previous RTB hearing, did not listen to her and told her that the upstairs occupants had a right to be angry at her. She has a right to be angry at them. On August 18, 2021, the police told the tenant not to film the upstairs occupants, it could lead to criminal charges, and she does not think she filmed the upstairs occupants after being told that by the police. This information is included in the tenant’s written PDF statement. The tenant did not obtain a police report, but the landlord did. She thinks she stopped filming the upstairs occupants in August 2021. The police told the tenant that the upstairs occupant cannot touch the tenant’s phone. The upstairs occupants were filming the tenant too, it is rude, so the tenant was doing it back to them. The tenant was not trying to get the upstairs occupants back by filming them. The police were racist against the tenant and were not fair to her. She thinks she stopped filming the upstairs occupants in July 2021. Her friend, who is a neighbour, provided a witness statement but was not available to call into this hearing to testify. Her friend provided a handwritten statement, which she wrote herself, and did not sign it. The tenant provided a photograph of the statement, that was written on a notepad. The tenant does not want “hate to win.” She does not think that she has to move out, but the upstairs occupants should be moving out and she wants an order for them to leave. The landlord should not be evicting her. The upstairs occupants are the problem.

Analysis

I found the tenant’s evidence to be less credible, as compared to the landlord. The tenant provided her testimony in an angry, upset, and agitated manner. She refused to answer some questions that I asked her. Her testimony was inconsistent, as her version of events changed frequently throughout this hearing. The tenant was more focussed on arguing with and interrupting me, than presenting her application. This hearing lasted 91 minutes. The tenant spoke for the majority of the hearing time, as compared to the landlord.

Conversely, I found landlord DD’s and landlord BP’s testimony to be more credible than the tenant. They did not argue with the tenant or interrupt her during her submissions. They provided their evidence in a calm, candid, forthright, and consistent manner.

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within 10 days after the date the tenant received the notice. The tenant received the 1 Month Notice on July 12, 2021 and filed

her application to dispute it on July 22, 2021. Therefore, the tenant is within the 10-day time limit under the *Act*. The burden shifts to the landlord to prove the reasons on the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice to the tenant for a valid reason. I find that the tenant significantly interfered with and unreasonably disturbed other occupants and the landlord at the rental property. As I have found one of the reasons on the 1 Month Notice to be valid, I do not need to examine the other reason.

I accept the affirmed testimony and evidence of landlord DD and landlord BP that the tenant has significantly interfered with and unreasonably disturbed the landlord's three management agents, the upstairs occupants, the landlord's contractors and inspectors, and the owner of the rental property.

I accept the affirmed testimony and evidence of landlord DD and landlord BP that the tenant constantly fights with the landlord's agents, refuses access to the rental unit to the landlord's contractors and inspectors, repeatedly records the upstairs occupants on video without their permission, causes a loss of quiet enjoyment to the landlord and upstairs occupants, and causes the police to be called to the rental property. I find that this is a pattern of behaviour that has caused significant interference and unreasonable disturbance to the landlord's agents and the upstairs occupants at the rental property.

The tenant agreed that she received a copy of the previous RTB decision, dated July 28, 2021, where the other Arbitrator cautioned the tenant about recording the upstairs occupants. The previous Arbitrator noted that the tenant's behaviour was "jeopardizing her tenancy," as noted above in the reproduced portion of that decision. I find that both parties testified about many of the same events that were noted in the previous RTB hearing decision. The tenant agreed that she repeatedly recorded the upstairs occupants, that she was angry at them, and that she had a right to be angry at them. The tenant agreed that she was told by the police in August 2021, to not record the upstairs occupants, because it could lead to criminal charges. These events from July 22, 2021 and August 18, 2021, occurred after the tenant received the landlord's 1 Month Notice on July 12, 2021. I find that the tenant's pattern of behaviour has continued from April 2020 to at least August 2021, despite receiving repeated warnings from the landlord's agents, the police, and the RTB.

I accept the affirmed testimony of landlord DD and landlord BP that the owner and landlord have tried to resolve these issues with the tenant, by offering free rent

incentives to the tenant and changing its representative from landlord BP to landlord DD, since the tenant had issues with landlord BP. I accept landlord DD's affirmed testimony that that these efforts have not resolved the situation and the tenant's behaviour has continued, contrary to the 1 Month Notice.

Section 55(1) of the *Act* reads as follows:

55(1) 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.

Accordingly, I dismiss the tenant's application to cancel the landlord's 1 Month Notice, without leave to reapply. I find that the landlord's 1 Month Notice, dated July 12, 2021, complies with section 52 of the *Act*. As the effective date of the notice of August 31, 2021 has long passed, I issue an order of possession to the landlord effective two (2) days after service on the tenant.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises 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: November 22, 2021

Residential Tenancy Branch