



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNC, RP, AAT, OT
 LL: OPC, FFL

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on July 7, 2021 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice for Cause;
- an order for regular repairs; and
- an order for the Landlord to allow the Tenant access.

The Landlord’s Application for Dispute Resolution was made on September 24, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for cause; and
- an order granting the recovery of the filing fee.

The Tenant, the Tenant’s Advocates C.S., D.P., and the Landlord’s Agent O.A. attended the hearing at the appointed date and time.

The parties acknowledged service and receipt of their respective Application and documentary evidence packages. The Tenant stated that he felt as though he was missing two pieces of the Landlord’s evidence. The Tenant was notified during the hearing that if the Landlord referred to a piece of evidence during the hearing that he did not receive, then we could determine if the evidence would be considered. I note that the Tenant did not bring forward any further concerns relating to service of evidence during the hearing. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an 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.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement or the *Act*. The Tenant's request for an order for regular repairs and for an order that the Landlord allow the Tenant access are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice to End Tenancy for Cause (the "One Month Notice") dated June 30, 2021 pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 47 and 55 of the *Act*?
3. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2011. Rent in the amount of \$955.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$392.50 which the Landlord continues to hold. Currently, the Tenant continues to occupy the rental unit. The Landlord provided a copy of the tenancy agreement in support.

The Landlord's Agent testified that she served the Tenant in person with a One Month Notice on June 30, 2021 with an effective vacancy date of July 31, 2021. The Tenant confirmed having received the One Month Notice on June 30, 2021, however, the Tenant stated that he only received the first page of the One Month Notice. The Landlord's Agent stated that all three pages of the Notice was served to the Tenant. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

“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 and safety or lawful right of another occupant or the landlord, and put the landlord’s property at significant risk.”

The Landlord’s Agent stated that the One Month Notice was served as the Tenant has not maintained reasonable health, and sanitary standards in the rental unit. The Landlord’s Agent stated that an inspection of the rental unit conducted in January 2021 at which point it was found that the rental unit was extremely cluttered and dirty. The Landlord provided several pictures of the rental unit in support.

The Landlord’s Agent stated further inspections and numerous breach letters were sent to the Tenant advising the Tenant of his responsibility to maintain sanitary standards in the rental unit. The Landlord’s Agent stated that the breach letters indicate the Landlord is under the impression that the unsanitary condition of the rental unit is a breach of a material term of the tenancy agreement. Furthermore, the Landlord’s Agent confirmed that the breach letters provided the Tenant a reasonable amount of time to comply with the Landlord’s request to clean the rental unit, and that failure to comply would result in the termination of the tenancy. The Landlord provided a copy of the breach letters sent to the Tenant in support.

The Landlord’s Agent stated that the Tenant has not complied with the Landlord’s request to clean the rental unit to a reasonable health and sanitary standards. The Landlord’s Agent stated that the Tenant’s rental unit was found to have a cockroach infestation. The Landlord’s Agent stated that the Tenant is unwilling to move his personal possession to accommodate the recommended treatment of the cockroaches to eliminate the infestation, putting the Landlord’s property at significant risk. The Landlord provided a copy of the pest control report in support.

The Landlord’s Agent stated that the Tenant is also aggressive and rude with other occupants, the Landlord’s Agent, and with the pest control inspector. The Landlord provided letters of complaint as well as the comments provided by the pest control inspector in support.

In response, the Tenant denies being rude to others, and stated that he has complied with the Landlord’s request to clean his rental unit. The Tenant stated that he was out of the Country travelling and that once he returned, he found cockroaches in his rental unit. The Tenant questioned the pest control inspector’s ability to make a determination that the rental unit was infested. The Tenant’s advocate stated that the Tenant’s rental unit is cluttered but that it is not a hoarding situation and not dirty. The Tenant’s advocate stated that the Tenant is a quirky artist that is sometimes misunderstood, lacking social skills.

The Tenant referred to an audio file he wished to play during the hearing, which would demonstrate that he has not harassed anyone. The Tenant confirmed that the audio file

was too large to provide as part of his Application and he had not served the audio file to the Landlord prior to the hearing. As such, the Tenant was notified that the audio file which was in existence prior to the hearing but not provided would not be considered.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause on June 30, 2021 with an effective vacancy date of July 31, 2021. The Tenant confirmed receipt of the One Month Notice on the same date.

According to Section 52 of the Act in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.**

The Tenant stated that he only received page 1 of the One Month Notice on June 30, 2021. I find that the Tenant submitted the Application to dispute the Notice on July 7, 2021 at which point he provided a complete copy of the One Month Notice. As such, I find that it is more likely than not that the Tenant received the One Month Notice in its approved form. I find that the One Month Notice complies with the requirements of Section 52 of the Act. I further find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, I accept that the Landlord's reason to end the tenancy is based on the fact that the Tenant breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I find the tenancy agreement between the parties indicates;

"The tenant must maintain reasonable health, and sanitary standards throughout the rental unit and residential property to which the tenancy has access."

According to the Residential Tenancy Policy Guideline 8;

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that the Landlord has provided sufficient evidence to demonstrate that the Tenant's rental unit has not been maintained in reasonable health and sanitary standards. I find that the Landlord has provided the Tenant with several written caution notices highlighting the concerns regarding the unsanitary condition of the rental unit and that it is a breach of a material term of the tenancy agreement. I find that the Landlord has provided the Tenant with a reasonable amount of time to comply with their request to clean the rental unit or else it would result in the tenancy being terminated.

I find that the Tenant has provided insufficient evidence to demonstrate that they have complied with the Landlord's request to bring the rental unit to a reasonable health and sanitary standard. I find that the Tenant's inaction to be impeding the Landlord's ability to treat a cockroach infestation in the rental unit.

In light of the above, I dismiss the Tenant's Application to cancel the One Month Notice dated June 30, 2021. I find that the Landlord has demonstrated on a balance of probabilities, that they have sufficient Cause to end the tenancy as the Tenant has breached a material term of the tenancy agreement. I find that the Landlord is entitled to an Order of Possession which is effective at **1:00PM on November 30, 2021**.

As the Landlord was successful with the Application, I find that the Landlord is entitled to recover the **\$100.00** filing fee which can be deducted for the Tenant's security deposit currently being held by the Landlord.

Conclusion

The Tenant's Application is dismissed as I have found they have breached a material term of the tenancy agreement. As such, I grant the Landlord an Order of Possession to be effective at 1:00 P.M. on November 30, 2021 after the Order is served to 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.

Having been successful with their Application, I find that the Landlord is entitled to withhold \$100.00 from the Tenant's security deposit currently being held.

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 10, 2021

Residential Tenancy Branch