



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, FFT

Introduction

The Tenant applies to cancel a One-Month Notice to End Tenancy dated October 20, 2021 (the “One-Month Notice”) pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”). The Tenant also seeks more time to dispute the One-Month Notice pursuant to s. 66 and for return of their filing fee pursuant to s. 72.

K.D. appeared as agent for the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf. The hearing began as scheduled pursuant to Rule 7.1 of the Rules of Procedure. The hearing was conducted without participation of the Tenant pursuant to Rule 7.3 of the Rules of Procedure.

K.D. affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. K.D. confirmed that they were not recording the hearing.

K.D. advises that the One-Month Notice was personally served on the Tenant on October 22, 2021. The Landlord submits a proof of service form as evidence of serving the One-Month Notice. I find that the Tenant was served with the One-Month Notice in accordance with s. 88 of the *Act* and was received by the Tenant on October 22, 2021.

Preliminary Issue – Service of Documents

At the outset of the hearing, K.D. advised that the residential property was adversely affected by localized flooding that took place in November 2021. The Landlord was notified that the residential property was not habitable on November 18, 2021 and the water, natural gas, and electricity was shut off for the building.

K.D. is uncertain when the Tenant vacated the rental unit after the flooding. However, the Landlord was certain that K.D. was no longer residing in the rental unit as of November 18, 2021. K.D. says that the Tenant provided the Landlord a forwarding PO Box address after the Tenant vacated the rental unit.

I mention this background because the Landlord says that as of November 18, 2021, they did not have notice of this hearing as the Tenant had failed to serve the Notice of Dispute Resolution on the Landlord. I note that based on our records, the Notice of Dispute Resolution was provided to the Tenant on November 3, 2021.

K.D. advises that the Landlord received notice of the Tenant's application after the Residential Tenancy Branch had contacted them on November 23, 2021. The Landlord's agent says the Landlord served the Tenant with their responding evidence by way of registered mail sent on November 24, 2021 to the forwarding address provided by the Tenant. A tracking receipt was provided by the Landlord as evidence that their responding evidence was served on the Tenant.

I accept the undisputed evidence from K.D. that the Tenant provide him with a forwarding address since vacating the rental unit due to the flooding. I find that the Landlords evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlords responding evidence on November 29, 2021.

Issue(s) to be Decided

- 1) Whether the One-Month Notice should be cancelled?
- 2) Is the Landlord entitled to an order of possession?

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.

K.D. confirms that the tenancy began on July 1, 2021. Rent of \$700.00 is due on the first day of each month. K.D. confirmed that the Landlord holds a security deposit of \$350.00 in trust for the Tenants. A written tenancy agreement was submitted into evidence by the Landlord.

K.D. describes a series of issues with the Tenant since the tenancy began which prompted the issuance of the One-Month Notice.

The Landlord highlights that pursuant to clause 21 of the tenancy agreement, the Tenant is to obtain authorization from the Landlord for additional occupants within the rental unit. On August 16, 2021, the Landlord discovered that Tenant had another occupant staying in the rental unit. The Landlord issued a warning letter dated August 16, 2021 in which it says "your lease does not allow for sharing." K.D. says that this letter served as notice of the breach of clause 21 and, despite the warning, the other occupant continued to reside within the residential unit up until the residential property was deemed uninhabitable due to the flood.

Additional letters dated September 13, 2021, October 14, 2021, and October 19, 2021 were submitted into evidence by the Landlord. It details various issues with the Tenant, the letter of September 13 makes reference to additional occupants and an apparent threat from the Tenant's guest that "he would flatten the tires of the property manager". The September 13, 2021 letter highlights that continued breach would result in termination of the tenancy. Further written warning was raised with respect to the additional occupant on October 14, 2021.

K.D. further submits that the Tenant has caused water damage to the rental unit below his. He says these incidents occurred on three occasions, September 10 and 28, and again on November 4. The letter dated October 19, 2021 states that Tenant failed to allow the Landlord's agent access to the rental unit to inspect to see what the issue was. This was confirmed by K.D.. K.D. is uncertain on the precise cause but hypothesizes that the Tenant has caused the damage by overflowing the bathroom tub. A letter dated November 4, 2021 confirms that this occurred once more after the One-Month Notice was issued.

K.D. describes that the Tenant has disturbed other tenants of the residential property, including issues with respect to noise and parking in the parking spaces of other tenants. K.D. says that the Landlord has received complaints from other tenants to this effect.

K.D. advises that the property is uninhabitable due to the flood and that the Tenant no longer resides within rental unit. As mentioned above, the water, power, and natural gas appear to have been shut-off due to the flooding. K.D. indicates that the Tenant has

expressed a wish to the Landlord to reoccupy the rental unit once the building has been returned to a habitable state. K.D. says that the Tenants rental unit, which is on the second floor, is relatively unaffected by the flood damage and is only uninhabitable by virtue of the order issued by the provincial authorities and the lack of utility services. No timeline was provided by the Landlord on when the residential property would be permitted to allow the return of its tenants.

Analysis

The Tenant applies to cancel the One-Month Notice signed October 20, 2021.

A Landlord may end a tenancy for cause, with those causes listed under s. 47 of the *Act*, after issuing a notice to end tenancy not earlier than one month after the notice is received and the day before that rent is payable under the tenancy agreement. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice and files an application, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord.

Here, the Tenant filed to dispute the One-Month Notice on November 1, 2021. I have previously found that the One-Month Notice was received by the Tenant on October 22, 2021, when the Landlord personally served it on the Tenant. Accordingly, the Tenant filed within 10 days permitted by s. 47(4) of the *Act*. Thus, their application for more time under s. 66 was unnecessary.

The One-Month Notice was issued for various issues listed under s. 47(1), including that the Tenant has put the Landlord's property at significant risk. I am satisfied based on the undisputed evidence provided K.D. that the Tenant has put the Landlord's property at significant risk with respect to the repeated issues with water entering the rental unit below the Tenant's rental unit.

K.D. argued that the Tenant is responsible and hypothesized that it was due to an overflow of the Tenant's bathtub. I am unable to make any findings on whether the Tenant caused the water damage to the unit below his based on the Landlord's submissions.

However, I find that regardless of whether the Tenant is, in fact, responsible for the water damage itself, the Tenant has breached his obligation to give the Landlord entry

into his rental unit as permitted by s. 29(1)(f). I find that the water entering the rental unit below the Tenant's was an emergency making entry into the Tenant's rental unit necessary to protect the Landlord's property. I find that the Tenant failed to permit the Landlord to enter his rental unit as permitted by the *Act* on September 10 and 28 to determine the source of the water issue. The Tenant's actions have put the Landlord's property at significant risk.

I am further satisfied that the Tenant has caused unreasonable disturbances to other tenants of the residential property and either he or his guest have adversely affected the right of other tenants to their parking space. The Landlord provided repeated warnings and, despite these warnings, the Tenant's actions persisted such that the Landlord was justified in issuing the One-Month Notice.

As I find that there are grounds for issuing the One-Month Notice, I need not consider the other claims raised by the Landlord. The Tenant's application to cancel the One-Month Notice is hereby dismissed.

I find that the One-Month Notice complies with the formal requirements set out under s. 52 of the *Act*. I note that the form used by the Landlord, RTB-33, has been updated and is no longer current. However, the essential details from the new form are present in the old form and those differences that do exist do not substantively change any of the relevant details required under the notice. To the extent it is necessary, I exercise my discretion under s. 68 to correct the One-Month Notice on the basis that it is reasonable to do so and the Tenant knew why the Landlord was issuing the notice.

As the formal requirements under s. 52 have been met, I find that the Landlord is entitled to an order of possession pursuant to s. 55(1). The Landlord shall have their order of possession.

Conclusion

The Tenant's application to cancel the One-Month Notice is dismissed. I find that the formal requirements of s. 52 have been met and that the Landlord is entitled to an order of possession pursuant to s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit no later than **two (2) days** after having received this order.

As the Tenant was unsuccessful in his application, I dismiss his claim for the return of his filing fee.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order for possession, it may be filed by the Landlord 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: December 15, 2021

Residential Tenancy Branch