



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

SB and AY appeared as agents for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord's agents confirmed receipt of the tenant's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence.

Preliminary Issue: Service of Evidence

The tenant testified that they did not receive the landlord's evidence package until January 11, 2022, but that they did have the opportunity to review the materials. Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule

3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

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.

Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party.. In this case I am satisfied that the tenant did have an opportunity to review the landlord's evidentiary materials. Accordingly, I allow the landlord's late evidence to be admitted for the purposes of this hearing.

As the tenant confirmed receipt of the 1 Month Notice dated November 1, 2021, I find the 1 Month Notice duly served in accordance with section 88 of the *Act*.

Issues

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

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 1, 2019, with monthly rent currently set at \$1,522.50, payable on the first of the month. The landlord currently holds a security deposit in the amount of \$750.00.

The landlord served the tenant with a 1 Month Notice to End Tenancy on November 1, 2021 providing following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
4. The 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;
5. The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
6. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord's agents confirmed in the hearing that the tenant has not engaged in illegal activity, and that this was selected in error.

The landlord's agents testified that they had served the tenant with a 1 Month Notice as the tenant has a long and extensive history of multiple and repeated breaches of the tenancy agreement, which has caused a significant disturbance to the landlord and other occupants in the building, as well as putting others at significant risk. The landlord provided a detailed summary of these breaches on the 1 Month Notice and in their evidentiary materials, which the tenant disputes. The tenant disputes several of the allegations such as smoking marijuana, and causing an extraordinary amount of damage or disturbance to the extent that justifies the ending of the tenancy. The tenant acknowledged some of the issues such as the storage of items in their parking spots, but notes that the complaints are trivial, and that the complaints were addressed after warnings were issued. The tenant feels that the landlord's complaints are trivial in nature, and do not justify the ending of the tenancy.

The landlord responded in the hearing that the tenant continues to show a disregard for the terms of the tenancy agreement, even after the issuance of the 1 Month Notice and warning letters. The landlord provided a copy of a warning letter dated June 11, 2020 informing the tenant that they must wait until the garage gate closes entirely before proceeding in order to prevent crime. The landlord also noted in the letter that failure to remedy the issue immediately could result in a Notice to End Tenancy. The letter also notes the date that four previous reminders were sent from June 18, 2019 through to December 12, 2019. The landlord also submitted video footage of the tenant's vehicle entering and exiting the parkade on at least five occasions over an eight day period

without stopping to wait for the garage gate to close. These videos were of the tenant's behaviour after the 1 Month Notice was served on the tenant. The landlord argued that this shows the tenant's actions continue to put others at significant risk.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

I have considered the evidence and testimony before me, and although I note that some of the allegations such as the marijuana smoking are not sufficiently supported in evidence, I find that the landlord has provided sufficient evidence to support that despite repeated written warnings to the tenant about, the tenant continues to engage in behaviour that jeopardizes the safety and lawful rights of others in the building. Although the tenant may not feel they should bear any of the responsibility of stopping unauthorized persons from entering the building, the fact is that the tenant's actions have a direct affect on others, including necessary precautions that need to be taken to ensure the security of the building. I find that it was clearly communicated to the tenant that they should stop to ensure that the parkade gate closes completely before proceeding, but as demonstrated in the recent video footage, the tenant has shown a blatant disregard for the landlord's concerns and warnings. I find that by failing to take the proper precautions and ownership of one's actions when entering and exiting the building, the tenant has demonstrated a lack of concern for the safety and lawful right of others who also live in the building. As the tenant resides in a building with many other tenants and occupants, the tenant bears a shared responsibility with others to ensure that safety and security protocols are met. The tenant's negligent actions could cause a significant safety risk for others in the building as the secured parkade gate acts as a barrier of protection from those who should not have access to the inside areas.

Although the tenant feels that the landlord has fabricated or exaggerated their submissions in order to end this tenancy, I find that the landlord has actually demonstrated much patience as evidenced by the repeated warnings that have been sent to the tenant. I find that the tenant has had ample opportunity to correct their behaviour, but despite this, the tenant has demonstrated a level of negligence and dismissiveness that cannot be justified. I am satisfied that even after the issuance of the 1 Month Notice, the tenant continues to engage in behaviour that jeopardizes the safety

and lawful right of others, as evidenced by the tenant's refusal to wait for the parkade gate to close completely before proceeding. I find that the landlord has demonstrated a pattern of behaviour by the tenant, rather than a singular event, that jeopardizes the safety and lawful right of others in the building. I am not confident that the tenant will consider changing their behaviour if the tenancy were to continue. Accordingly, I dismiss the tenant's application to cancel the 1 Month Notice dated November 1, 2021.

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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, December 31, 2021. As that date has passed, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful with their application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of December 31, 2021.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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: January 20, 2022

Residential Tenancy Branch