



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1288293 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, LRE, PSF, OLC

Introduction

This hearing dealt with the tenant's application pursuant to 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

MD, counsel, appeared with the landlord's agent JL, and represented 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 confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause dated September 17, 2021, which was personally served to the tenant. In accordance with section 88 Act, I find the tenant duly served with the 1 Month Notice.

Preliminary Issue – Amendment to the Tenant’s Application

The tenant uploaded evidentiary materials dated October 1, 2021, requesting an amendment to their application.

Residential Tenancy Policy Guideline #23 sets out of the sequence of events that must be followed in amending an application, including the following steps:

- 1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);*
- 2. the applicant submits this form and a copy of all supporting evidence to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;*
- 3. the Residential Tenancy Branch or Service BC accepts the Amendment to an Application for Dispute Resolution form submitted in accordance with the Rules of Procedure;*
- 4. the applicant serves each respondent with a copy of the Amendment to an Application for Dispute Resolution form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and*
- 5. the arbitrator, at the hearing, considers whether the principles of administrative fairness have been met through the amendment submission process and whether any party would be prejudiced by accepting the amendment(s), determines whether to accept the amendment(s) and records the determination in a written decision.*

Although the tenant did upload the proper form as part of their evidentiary materials, I find that the tenant did not follow the specific step as outlined in Step 2. In light of this information, I was unable to consider the tenant’s amendment to their original application, and informed the tenant in the hearing that a decision could only be made in relation the original application as filed.

Preliminary Issue – Tenant’s Other Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The hearing started at 9:30 am, and ended at 10:50 a.m. in order to deal with the landlord’s Notice to End Tenancy. As the time allotted was insufficient to allow the tenant’s other claims to be heard along with the application to cancel the 1 Month Notice

to End Tenancy, I exercise my discretion to dismiss the portions of the tenant's application unrelated to the 1 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Issue(s) 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 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 May 1, 2016, with monthly rent currently set at \$665.18, payable on the first of the month. The landlord had collected a security deposit in the amount of \$320.00, which the landlord still holds.

The tenant was served with a 1 Month Notice to End Tenancy for Cause dated September 17, 2021 for the following reasons:

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 a lawful right or interests of the landlord or another occupant;
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The landlord provided the following reasons for why they are seeking an end of this tenancy. The current landlord took over ownership of the building on September 1, 2021. The landlord has a plan to undertake renovations of the building, and has confirmed that they have approached current tenants with offers of compensation to vacate their rental units. The landlord testified that they have no plans to evict tenants for the purpose of renovations, and that they plan on performing renovations as units become vacant. The landlord testified that they have started the process of offering incentives to sign Mutual Agreements to End Tenancy as they anticipate that the construction noise would cause some interference to some tenants.

JL, director of the company, testified that they had attended at the tenant's rental unit on September 13, 2021 to discuss their plans with the tenant, and after knocking on the tenant's door, the tenant had invited them in. The landlord testified that the tenant had voluntarily provided them access into their rental unit when they had knocked, and that they did not harass or threaten the tenant. JL testified that upon telling the tenant they wish to perform renovations, the tenant "went ballistic" and started screaming for the landlords to get out. JL testified that the tenant had followed them screaming loudly to "get out of my building".

JL attended later that date, and observed their employee BM in the parking lot. BM testified in the hearing that they were responsible for performing unit inspections, and providing access for contractors, as well as attending to emergency calls. BM testified that they attended the building with their wife BM on September 23, 2021 as requested by the landlord, and there was a man, whom was later identified as the tenant, who was standing there asking who BM was. After BM informed the tenant why they were there, and that they were involved with the new ownership, the tenant started yelling, screaming, and swearing at BM. BM testified that they walked back to the car, but the tenant appeared to be trying to provoke a confrontation. BM testified that they then noticed the tenant prepare to spit so BM turned their head, and the tenant had ended up spitting on BM's cheek and jacket. BM testified that they got into their car to call the police, who informed BM that they could not deal with residential tenancy matters.

The landlord testified that because of these incidents, as well as the ongoing intimidation by the tenant, they are unable to perform their duties as required and allowed under the *Act*, which include attendance at the building to perform regular inspections, delivering documents, and providing access to trades. The landlord is seeking an end of this tenancy due to the significant disturbance caused by the tenant, which has interfered with their ability to perform their functions as a landlord. The landlord expressed concern about the tenant's repeated calls to the police without just cause as the tenant feels threatened by the new landlord, and is upset about the landlord's plans to renovate.

The tenant testified in the hearing that they do not dispute that they have called the police on multiple occasions, but that they only did this when they felt threatened. The tenant testified that they required the services of the police to protect themselves, and that this was a "safety mechanism" when they felt threatened. The tenant testified that they suffer from a brain injury, and was taken by surprise when the landlord had attended on September 13, 2021 without providing the tenant with any notice of the

visit. The tenant denies spitting on BM, and testified that they would never spit on anybody. The tenant testified that they have been harassed and intimidated by the landlord, and felt the need to defend themselves “vocally against their abuse and threats”. The tenant submitted character reference letters from other tenants as well as a medical note dated October 5, 2021 stating that the tenant is “having a relapse of post concussion syndrome brought on by a threat to his dwelling/accommodation”. The tenant testified that days before the hearing, they were served with a letter from the landlord’s counsel, and that they were startled by the attendance.

The tenant’s witness, AY, attended the hearing, and testified that they have been contacted by the landlord’s agents with financial incentives to move out. The tenant testified that the landlord is attempting to evict the tenants in the building in order to renovate and increase the rent.

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 disputing the 1 Month Notice within the required time limit, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the submissions and evidence of both parties. In light of the evidence before me, I find that the tenant clearly feels threatened by the intentions of the new ownership of the building to renovate the building and rental units. The landlord does not dispute that they have approached tenants with financial incentives to end their tenancies, including the tenant in this dispute. The tenant suffers from a brain injury, which has been aggravated by the tenant’s perceived threat by the new landlord.

It is disputed by the tenant that they had spat on BM on September 13, 2021, and in light of the conflicting testimony of the events that day, I find that there is insufficient evidence to support whether the tenant had spat on BM or was involved in any action that could be considered illegal. However, I do find that that the tenant continues to act on the ongoing perception that they are being threatened by the landlord by calling the police. In the tenant’s own testimony they testified that they would use the police as a safety mechanism when they felt threatened. Based on the tenant’s own accounts, the tenant feels constantly threatened by the landlord’s actions, which include the landlord’s attendance at the tenant’s rental unit, and on the property.

The *Act* does provide for the following rights of the tenant:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In consideration of the evidence before me, I do not find that the landlord has contravened the *Act* by attending on the property, or by approaching the tenant at their rental unit. I find that the tenant did not have to give permission for the landlord to enter their rental unit, but the landlord obtained permission on September 13, 2021.

Section 88 of the *Act* establishes the following special rules for service of documents.

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

Although I sympathize with the tenant that they are easily startled and agitated, I find that the landlord has not contravened the *Act*. Although the tenant may feel threatened by the possibility of an eviction and their proposals to the tenants in the building, and although the tenant may perceive the landlord's actions to be threatening, I do not find that the tenant has the right to conduct themselves in a manner that interferes with the landlord's right to fulfill their duties and obligations as a landlord, which includes the landlord's attendance on the premises of the building.

I accept the undisputed fact that the tenant does suffer from a brain injury, which affects the tenant's ability to manage their stress, but this fact does not relieve the tenant from the consequences of their actions. In light of the evidence and testimony before me, I am satisfied that the landlord had provided sufficient evidence for me to conclude that the tenant has significantly interfered with and unreasonably disturbed the landlord in the execution of their daily duties such as attending on the premises of the building. I find that the very presence of the landlord and their staff on the property causes the tenant to feel extremely agitated to the extent that the tenant has repeatedly called the police, even when the matter is not considered a criminal matter. I find that the landlord had established that the tenant will not cease this or other behaviour such as following the landlord and their agents when they attend on the property. Although the tenant may be frustrated, fearful, or upset, I find that the tenant's decision to address these issues in this manner has a significant impact on the landlord's obligation to fulfill their duties for this building. I find that the tenant had other options, which the tenant did not pursue, such as filing an application for dispute resolution.

Lastly, although I acknowledge the significant impact the termination of this tenancy would have on the tenant, I find that the tenant an opportunity to acknowledge that their behaviour towards the landlord could be considered an issue, but they did not. I am not confident that the tenant will stop if the tenancy was to continue.

As stated earlier, although understandably upset or frustrated, the tenant had the option to file an application for dispute resolution in the event that the tenant feels that the landlord has or may contravene the *Act* or tenancy agreement.

As stated above, regardless of merits of the tenant's concerns in relation to the landlord's plans to renovate or end tenancies, the question is whether the tenant's actions were significant enough to justify the end of the tenancy on the grounds provided on the 1 Month Notice. Although I sympathize with the tenant that they have felt threatened by the possibility of an eviction, I find that the tenant's actions have caused a significant and unreasonable disturbance to the landlord and their agents.

Accordingly, I dismiss the tenant's application to cancel the 1 Month Notice dated September 17, 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.

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, October 31, 2021. As the tenant has not moved out, I find that the landlord is entitled to an Order of Possession.

Conclusion

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

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 27, 2022