Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LRE

Introduction

This hearing dealt with the tenants' 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
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70

JH and SM represented the landlord in this hearing, while WU appeared for the tenants. 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 tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenants' Application. The tenant confirmed receipt of the landlord's evidentiary materials. In accordance with section 88 of the *Act,* I find the tenants duly served with the landlord's evidence. The tenants did not submit any written evidence for this hearing.

The tenant confirmed receipt of the 1 Month Notice to End Tenancy dated August 17, 2021, which was posted on the tenants' door. In accordance with sections 88 and 90 of the Act, I find the tenants deemed served with the 1 Month Notice 3 days after posting.

Issues

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

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

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 the applications and my findings around it are set out below.

This month-to-month tenancy began on April 1, 2004. Monthly rent is currently set at $1,389.00, payable on the first of the month. The landlord had collected a security deposit in the amount of $500.00, which the landlord still holds.

The landlord served the tenants with a 1 Month Notice to End Tenancy on August 17, 2021 on the following grounds:

1. The tenants or a person permitted on the property by the tenants have put the landlord's property at significant risk, and
2. 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 testified that they had served the tenants with the 1 Month Notice after multiple warning letters have been issued to the tenants for failing to maintain reasonable health, cleanliness and sanitation standards throughout the rental unit and the residential property. The landlord provided detailed documentation to show that several warning letters have been served to the tenants since July 2018 to keep the premises in a neat and tidy condition, and to maintain ordinary health, cleanliness and sanitary standards. The July 18, 2018 letter notes that during a scheduled electrical repair in the rental unit, it was observed that the rental unit was cluttered, dirty, and posed a severe fire and tripping hazard. The letter also noted that the tenant had "plants in pots on the sloped roof that must be removed immediately." Since the issuance of that letter, the tenant was served further written warnings on December 17, 2018, February 7, 2019, February 22, 2019, June 11, 2021, and on August 17, 2021. The landlord served the tenants with the 1 Month Notice on August 17, 2021 as the tenants have failed to comply with the written warnings, and correct the behaviours referenced in the letters. The landlord submits that the tenants' failure to address the concerns brought up in these letters have put the landlord's property at significant risk. The landlord submitted a copy of the correspondence from the housing technician dated

August 15, 2021 informing the landlord that they had attended with another party to inspect the roof deck of the rental unit due to a leak directly below the tenants' rental unit, and were unable to inspect the roof deck due to the excessive amount of planters the tenants had stored in the rental unit as well as on the roof deck. The email also notes that the tenants had placed planters on the upper sloped roof outside the rental unit. The writer expressed concern that the possibility of damage to the building due to the number of items stored on the deck and roof, and the inability to perform a proper inspection for the purposes of of dealing with the water leak. The writer attached photos taken that day to show the condition of the deck and roof.

The landlord testified that despite all these letters, and the issuance of the 1 Month Notice, the tenants have not taken steps to address these concerns. The landlord testified that the tenant has been operating a home based business selling items such as the plants, which has caused considerable disturbance to neighbours by increasing the amount of visitors attending the property, as well as the storage and disposal of plants and discarded items on the property. The landlord had provided the tenants with written warnings about this, including a letter on June 11, 2021 which warned the tenants that the they must stop selling items and having people meet them at the rental unit or premises immediately as the home based business was considered a material breach of the tenancy agreement, which notes that tenants operating a business shall not "create excessive noise, vibration, smell, fumes, smoke, or disturbances" or "noticeably increase pedestrian or vehicle traffic in the complex". The landlord requested an Order of Possession for the end of January 2022 as the tenants have been given ample time to address the above referenced issues, but have failed to do so.

The tenants dispute the landlord's claims, and argued that they have been living at the rental unit since 2004, and only starting having issues when they had requested repairs to the leaking bathtub and faucets. The tenant testified in the hearing that they had confronted the manager about performing the repairs, and the manager had responded that the rental unit was too dirty. The tenants dispute that the condition of the rental unit was not maintained in a condition that met safety or sanity standards, and noted that the standards of "clean" varied from person to person.

The tenant testified in the hearing that the landlord had entered their rental unit without providing proper notice, and took photos without their permission or notice that they would be doing so. The tenant notes that in one of the emails from a neighbouring tenant, they had referenced hearing a rumour about the possible eviction of the tenants, which causes the tenants to believe that the manager or employees were inciting other

tenants to make false claims and complaints against the tenants. The tenant expressed concern about the ulterior motives of the landlord's employees in trying to end this tenancy.

The landlord's agents in the hearing responded that the requested repairs to the rental unit had all been completed ten years ago, and that the landlord has not avoided any repairs .The landlord's agents also testified that the work was completed by proper contractors and plumbers, which include recent repairs in 2018 and 2021. The landlord also disputes that they had ever entered the rental unit without proper notice, except in the case of an emergency as allowed under section 33 of the *Act,* which involved investigating repairing a leak.

The landlord's agent testified in the hearing that they had attended the rental unit themself, and had observed that the tenants had an excessive amount of plants stored in the rental unit and outside deck and roof, which posed a significant risk. The landlord expressed concern that the tenants have not taken any steps to change this behaviour despite the numerous letters, and length of time since the first letter in 2018.

Analysis

Section 47 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 tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that he has cause to end the tenancy on the grounds provided on the 1 Month Notice.

Although the tenants dispute the validity of the 1 Month Notice and the claims and testimony of the landlord, their agents, as well as the written complaints submitted by other tenants, and although the tenant believes hat the site manager was acting in a retaliatory or malicious manner towards the tenants, I do not find the tenants' claims to be convincing or persuasive. I find that the landlord provided a variety of evidence including numerous written warnings since 2018 and documentary evidence which supports the landlord's concerns that the tenants have failed to keep the rental unit as well as the outside deck and roof in a condition that a condition that meets safety standards. Although the interpretation of "clean" may differ from person to person, the main reason for why the 1 Month Notice was served was the landlord's concern that the tenants have put the landlord's property at significant risk. I find this concern to be supported by the fact that technicians had to attend on an emergency basis to investigate and repair a leak to another rental unit, but were unable to properly access

the area due to the amount of items stored on the deck and roof by the tenants. I find that this recent incident is not a first occurrence, as documented by the numerous letters to the tenants.

Despite the issuance of the previous warning letters, and despite the time afforded to the tenants to correct this behaviour, the tenants have not taken steps to address the problem. I find the tenants' blatant disregard for the landlord's concerns, and their refusal to acknowledge the safety risks their actions pose, supports the landlord's belief that the tenants' actions put the landlord's property at significant risk. I am not confident that the tenants will take this issue seriously considering the time that has passed, and the effort that has been taken by the landlord to address the problem.

Despite the tenant's concerns that the landlord or their agents were acting in a malicious or retaliatory manner, I find the facts support that the opposite is true. I find that the landlords had performed repairs as required over the length of this tenancy, and continued to do so despite the issues between the parties. Furthermore, I find that the landlord had given ample opportunity for the tenants to take corrective steps before ending this tenancy. I find that the tenants had provided various explanations for why the landlord's 1 Month Notice was invalid, and in this case I find that the landlord had met their burden of proof to support that the tenants' actions have, and continue to put the landlord's property significant risk. I find that the landlord provided a reasonable explanation for why they had entered the tenants' rental unit, which is an allowable reason under section 33 of the *Act* for emergency repairs. As the tenants reside in a multi-tenanted complex, the landlord has an obligation and right to access the tenants' rental in exceptional circumstances that necessitate the ability to perform repairs without notice. I do not find that the landlord had contravened the *Act.* In the case of an emergency repair or a situation where access to the rental unit is necessary for the health or safety of any party, or the preservation of the landlord's property, the cooperation of the tenants is of utmost importance. I do not find that the tenants acknowledge the importance of this provision.

For all these reasons, I dismiss the tenants' application to cancel the 1 Month Notice without leave to reapply. I also dismiss the tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit.

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 tenants' 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, September 30, 2021. In this case, this required the tenants and anyone on the premises to vacate the premises by September 30, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit by 1:00 p.m. on January 31, 2022, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The tenants' entire application is dismissed without leave to reapply. I find that the landlord is entitled to an Order of Possession.

The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit by 1:00 p.m. on January 31, 2022, the landlord may enforce this Order in 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 6, 2022

Residential Tenancy Branch