



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNC

Introduction

The Tenant applies to cancel a One-Month Notice to End Tenancy dated October 31, 2021 (the “One-Month Notice”) pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”). The Tenant further seeks an order pursuant to s. 62 of the *Act* that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

A.P. appeared as the representative for the Tenant. A.P. advised that she is acting on behalf of the Tenant as her attorney. The Tenant is A.P.’s mother. The Tenant did not attend the hearing. G.C. appeared as agent for the corporate Landlord.

The parties 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. The parties confirmed that they were not recording the hearing.

G.C. advised that the Landlord served the Tenant with a copy of the One-Month Notice by personally serving it on the Tenant on October 31, 2021. A copy of the One-Month Notice was also served on A.P. by way of email sent on the same date, as shown in the Tenant’s evidence package. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* on October 31, 2021. I further find that A.P., as the Tenant’s attorney, was sufficiently served with the One-Month Notice on October 31, 2021 pursuant to s. 71(2) of the *Act*.

A.P. advised that she served the Landlord with the Notice of Dispute Resolution and evidence by way of emails sent on November 5, 2021 and December 20, 2021. The Landlord acknowledged receipt of the Tenant’s application and evidence and did not raise any issue with service via email. I find that the Landlord was sufficiently served with the Tenant’s application and evidence pursuant to s. 71(2) of the *Act*.

G.C. was unable to demonstrate when the Landlord's evidence was served on the Tenant. A.P. indicated that she received the Landlord's evidence on January 3, 2022 and provided a copy of the email she received from G.C. on that date. Again, no issue was raised with respect to service via email. I find that the Landlord's evidence was sufficiently served on the Tenant on January 3, 2022 pursuant to s. 71(2) of the *Act*.

Preliminary Issue – Style of Cause

At the outset of the hearing, I clarified with the Landlord's agents who, in fact, was the Landlord. G.C. advised that the subject residential property is co-owned by two corporate entities for which he is the shareholder for one of the co-owners. The tenancy agreement shows the Landlord as the name for the residential property.

I confirmed that the corporate Landlord, as listed in the tenancy agreement, is the correct Landlord. The Tenant raised no objections with respect to the amendment. Accordingly, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the corporate Landlord as listed in the tenancy agreement.

Preliminary Issue – Adjournment Request

A.P. sought an adjournment on the basis that she received the Landlord's evidence on January 3, 2022, which she argued was late and did not provide her sufficient time to respond. She further argued that her aunt, the Tenant's sister, was supposed to attend the hearing as support but was unable to do so due to an accident.

When asked about the Tenant's sister, A.P. advised that her aunt was more familiar with the Residential Tenancy Branch process but had no firsthand knowledge of the relevant events. It appeared that the Tenant's sister would have attended as assistant to A.P.

I note that the Landlord, as respondent, had to serve their evidence within 7-days of the hearing, as provided by Rule 3.15 of the Rules of Procedure. I find that the Landlord has complied with Rule 3.15, albeit on the last possible day. All the applicant's evidence is to be provided in one package and served within 14-days of the hearing, as provided by Rules 3.13 and 3.14. Further, the Rules of Procedure do not contemplate response evidence from an applicant and only permit additional evidence on the basis that it is

new and relevant as set out under Rule 3.17. In other words, the Rules of Procedure do not provide an applicant the opportunity to provide responding evidence to the respondent's evidence. I find there is no prejudice to the Tenant with respect to the service of the Landlord's evidence on January 3, 2022.

The final argument from A.P., that her aunt was unable to attend, was not persuasive on the basis that A.P. is the Tenant's legal representative as her attorney. Further, based on A.P.'s admission, the Tenant's sister was no better placed to provide direct evidence on the matters relevant to the dispute. Indeed, all the relevant documents indicate that the Landlord was communicating directly with A.P.. I find that there is no prejudice to the Tenant by not having the Tenant's sister attend the hearing.

I declined to grant the Tenant the requested adjournment at the hearing. The One-Month Notice was issued on October 31, 2021 and the effective date set out in the notice is November 30, 2021. I find that further delay of this matter would be prejudicial to the Landlord and that it was in the interest of the parties to have the matter dealt with. Both parties have had an opportunity to serve their evidence on the other side such that the matter could be dealt with on its merits.

Issue(s) to be Decided

- 1) Whether the One-Month Notice should be cancelled? If not, is the Landlord entitled to an order for possession?
- 2) Should an order that the Landlord comply with the *Act*, Regulations, and/or tenancy agreement be granted?

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.

The parties confirmed the tenancy began on May 1, 2019 and that rent is currently \$1,000.00, which is due on the last day of the month. The Landlord confirmed a security deposit of \$487.50 is currently held in trust for the Tenant.

The Landlord advises that the One-Month Notice was issued due to several complaints they have received from other tenants at the residential property. The Landlord issued

the One-Month Notice on the basis that Tenant seriously jeopardized the health or safety or lawful right of other occupants, that the Tenant has put the Landlord's property at significant risk, and that the Tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, safety, security, or physical well being of another occupants.

The One-Month Notice does provide details for the stated causes, as contemplated by the form. However, G.C. emailed A.P. on November 5, 2021 providing the following justification:

1. The Tenant was moving about the hallways wearing no undergarments and exposing herself.
2. The Tenant has lost control of her bowels and has left messes in the common areas of the residential property.
3. That the Tenant smokes in common areas of the residential property, which is prohibited.
4. That the Landlord has received complaints for other tenants regarding the Tenant asking them for cigarettes.
5. The rental unit is in "deplorable" condition.

A copy of the November 5, 2021 email was provided by the Tenant.

G.C. says that these complaints have been ongoing, and that the Landlord has made requests to A.P. to have the Tenant moved to assisted care facility as she is no longer able to care for herself. A.P. does not reside in the same community as the Tenant.

There are several letters from occupants of the residential property put into evidence by the Landlord. One from A.H. dated October 3, 2021 states that he came across feces on the carpet in front of the building's elevator with a trail of feces leading to the Tenant's rental unit. The letter further details other incidents in which he discovered feces on the floor of the common area and an occasion when he came across the Tenant with feces coating her leg from her knee to her ankle.

A letter from W.C. dated November 8, 2021 states that the Tenant wanders about the residential property dressed inappropriately and has been asked for cigarettes from the Tenant on several occasions. There is also mention of an incident respecting feces found in the common areas of the residential property.

The building's cleaner, E.W., who also resides at the residential property, provides two notes regarding the Tenant, one undated and the other dated November 23, 2021. Both mention the issue of the Tenant tracking feces through the common areas. The note from November 23, 2021 states that E.W. has seen feces on the Tenant's dress.

D.W., another occupant of the residential property, states in an undated note that the Tenant has requested cigarettes from her on a number of occasions, including incidents in which the Tenant has come to D.W.'s door. D.W. says in the letter that she has had to put up a sign on her door to deter the Tenant from coming to her door to ask for cigarettes.

Another email dated December 25, 2021 from S.W., another occupant of the residential property, states that he has been repeatedly asked for cigarettes from the Tenant. These include incidents in which the Tenant comes to S.W.'s door from 11:00 PM to 3:00 AM and then beginning again at 6:00 AM. The email further states that the Tenant has become agitated and yell when told she could not have any cigarettes.

At the hearing, G.C. states that he was provided a photograph showing the Tenant covered in feces. The photograph was not in evidence.

G.C. further states that the residential property recently had electrical work done throughout the building. He says that the electrician refused to enter the Tenant's rental unit as it was unsanitary. G.C. states that in addition to the above noted complaints, the One-Month Notice was issued following a building inspection he conducted in October 2021 in which he accessed the Tenant's rental unit. G.C. says that the rental unit was a horrible mess when he inspected it in October 2021.

A.P. disputes the One-Month Notice on behalf of her mother on the basis that there is a level of animosity directed to her mother by the building's occupants. In particular, she says that S.W.'s complaints relate to the Tenant refusing S.W. cigarettes. A.P. further states that her mother has been bullied by the previous building manager, J.S., and his son. G.C. says that J.S. has been terminated from his position as the building's manager and is no longer a resident at the residential property.

A.P. denies that her mother has lost control of her bowels and that the photograph she has seen of feces on the ground appeared to be dog feces. A.P. states that the Tenant has care aids come to her home twice per day to assist in her personal care and in the care of her apartment.

An email dated between August 4, 2021 between A.P. and J.S., shows A.P. asking that J.S. tell the building's other residents to stop lending the Tenant cigarettes as she does not have the means to pay them back and that A.P. cannot cover her mother's debts to other residents.

J.S. notified A.P. on August 10, 2021 via email that various issues regarding the Tenant were impacting other residents, in particular the issue of cigarettes. J.S. warned that one more complaint would result in one-month notice to end tenancy being issued. In A.P.'s response, she asks that any eviction be put on hold and that the Tenant's continued living at the residential property was no longer sustainable.

At the hearing and in her written submissions, A.P. admits that her mother would be better served in an assisted care facility. A.P. says that the Tenant is on a waiting list for such a facility and has social workers attempting to expedite the process.

Analysis

The Tenant applies to cancel the One-Month Notice.

Pursuant to s. 47 of the *Act*, a landlord may end a tenancy for cause after issuing notice effective no earlier than one-month after it is received by the tenant and the day before the rent is due as per the tenancy agreement. Presently, the Landlord issued the One-Month Notice based on the causes listed in sections 47(1)(d)(ii) and (iii), and 47(1)(e)(ii) of the *Act*. It is the Landlord's obligation to prove on a balance of probabilities that the One-Month Notice was issued properly and that the stated causes exist.

I note that the One-Month Notice fails to specify the specific details for ending the tenancy, as is contemplated by the form. I further note that the form is in an older version of RTB-33, the standard form one-month notice to end tenancy issued by the Residential Tenancy Branch. I find that these technical deficiencies do not affect the overall enforceability of the One-Month Notice.

With respect to the older form, I note that it contains all the relevant information as required by the new form. The old form does not undermine the formal requirement set out by s. 52(e), which I find has been met.

With respect to a lack of information in the details of cause section of the One-Month Notice, the details of the eviction are listed in the checked boxes above the section and the Landlord provided A.P. specific information in the email of November 5, 2021. The Tenant had filed to dispute the notice on November 4, 2021. At the hearing, A.P. was aware of the alleged causes for ending the tenancy and was able to provide evidence in support of her mother's claim. Further, some of the issues, particularly the cigarettes, were known to A.P. as early as August 4, 2021, as evidenced by her email to J.S. and J.S.'s email to A.P. on August 10, 2021. I find that the lack of description in the One-Month Notice within the details of causes section does not prejudice the Tenant as her representative was able to mount a fulsome response to the Landlord's claims.

I find that the form and content of the One-Month Notice, as contemplated by s. 52 of the *Act*, have been met under the present circumstances.

I place significant weight on the written statements from the other occupants of the residential property. I am satisfied that the Tenant has issues with the control of her bowels and has tracked her feces in the common areas of the residential property as described by the other residents at the residential property.

Though no photographs of this were provided by the parties, the Landlord has provided multiple accounts from various building residents confirming essentially the same details. A.P. argues that this is dog feces, however, A.P. is not a resident of the building and makes her arguments based on her opinion of a photograph she received. Two residents at the building, which include the building's cleaner, have witnessed feces on the Tenant herself.

I empathize with the Tenant. However, the Tenant has caused messes within the residential property on several occasions that directly affect the well-being of other residents. I find that feces left within the residential property by the Tenant adversely affect the health of the other residents of the building and their lawful right to the quiet enjoyment of the building's common areas as provided by s. 28 of the *Act*. It is the Landlord's obligation to ensure that the rights and interests of the other resident's are protected and their means of doing so is by issuing a notice to end tenancy when it is warranted.

As the Landlord has satisfied me that this aspect of the One-Month Notice was properly issued, I decline to cancel the notice as requested by the Tenant and dismiss her application. Pursuant to s. 55(1) of the *Act*, when a tenant's application disputing a

notice to end tenancy is dismissed and the notice complies with the formal requirements of s. 52 are met, I must grant the landlord an order for possession. Both of these conditions are presently met. Accordingly, the Landlord is entitled to an order for possession of the rental unit.

I take note that the Tenant is currently on a waitlist for an assisted care facility due to her health. No timeline on this was provided by A.P. as she had none herself. Given that the Tenant is on a waitlist and given that A.P. lives in another community, I delay the order for possession such that it take effect on January 31, 2022 at 1:00 PM.

Conclusion

I dismiss the Tenant's application to cancel the One-Month Notice. Accordingly, the Landlord is entitled to an order for possession by virtue of s. 55(1) of the *Act*.

Given the Tenant's health and the fact that A.P. is in another community and is less able to directly assist her mother move, I order that the Tenant provide vacant possession of the rental unit on **January 31, 2022 at 1:00 PM**.

It is the Landlord's obligation to serve this order 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.

As the tenancy is over, the Tenant's claim that the Landlord comply with the *Act*, Regulations, and/or tenancy agreement is dismissed.

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 12, 2022

Residential Tenancy Branch