



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, RP, PSF, OLC

Introduction

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

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- a monetary order for compensation loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- an order to have the landlord provide services and facilities as required by the *Act*, regulation or tenancy agreement pursuant to section 65.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Tenant Text messages evidence

The tenant served the landlord a series of text messages one day prior to this hearing. JL testified that this should not be accepted as it is late evidence. The tenant testified that she had these messages in September but since it was a private conversation, she decided not to submit it. Residential Tenancy Branch Rules of Procedure address the matter as follows:

3.14 Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17. Rule 3.17 considers new and relevant evidence. As this evidence is not new, and that the tenant was unable to explain how this is relevant, the text messages submitted by the tenant were not considered in making a decision.

Issue(s) to be Decided

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

Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation, or tenancy agreement?

Is the tenant entitled to a rent reduction?

Is the tenant entitled to an order compelling the landlord to provide services and facilities?

Is the tenant entitled to an order to have the landlord make repairs to the unit or suite?

Background and Evidence

JL gave the following testimony. JL testified that the tenancy began on September 21, 2016 with the current monthly rent of \$772.00 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on August 17, 2021 for the following reason:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

JL testified that a previous tenant; AM, was a significant problem in the building. JL testified AM physically assaulted another tenant. JL testified that the landlord went through a long and difficult process through the Residential Tenancy Branch to obtain an order of possession and evict AM in May 2021. JL testified that the tenant called him on August 13, 2021 asking if he would reconsider his feelings toward AM and let him stay in the building for a few days. JL testified that he denied the request and cautioned the tenant that if she brings him into the building, she could be risking her tenancy.

JL testified that the tenant did bring AM into the building and that numerous tenants witnessed this. JL testified that many tenants contacted him voicing their concerns and about AM being in the building and inside the subject tenant's suite. JL testified that many tenants were fearful and suffered anxiety by the mere sight of AM. JL testified that on August 16, 2021 he sent the tenant a letter advising that AM was to leave immediately. JL testified that on that same night, the tenant not only disregarded the landlords written request, but she also had a party with AM in attendance. JL testified that the tenant caused significant stress and anxiety to numerous tenants and put their

safety at risk and undermined the entire process that the landlord undertook to follow the legal process to remove AM. JL and EC request an order of possession.

The tenant gave the following testimony. The tenant testified that “I have a right to live me life”. The tenant testified that AM stayed in other suites and that all those tenants should be evicted as well. The tenant testified that AM was going to sleep in Stanley Park, but it was late, so she let him sleep in her car. The tenant testified that she is a good tenant and wants to stay.

Analysis

When a landlord issues a notice to end tenancy, they bear the burden of providing sufficient evidence to support the issuance of the Notice. The landlord needs only demonstrate that one of the reasons identified in the One Month Notice is valid to end a tenancy for cause. The landlord provided extensive documentation to support their position.

The tenant’s testimony changed throughout the hearing. The tenant first stated she received evidence on January 7, 2021 then later changed it and stated she received it three days before the hearing. When asked if she had all three pages of the Notice to End Tenancy, the tenant confirmed she did. When it was pointed out that on page three it states that a tenant must dispute the notice within 10 days of receiving and that she filed 16 days later, the tenant then stated she was never served with page three.

The tenant stated that the evicted tenant was never in her unit, but then later stated that he was in her unit on at least two occasions from August 14-17, 2021. The tenant stated that she had no knowledge of the evicted tenants’ eviction or the proceedings, but then later stated she did. The landlord also provided a letter written and signed by the tenant stating that the allegations against AM were “a complete and utter fabrication” and that she would attend his arbitration hearing.

Throughout the hearing, when the tenants testimony was questioned or challenged, she would alter the version of events. The tenant frequently contradicted herself during the hearing. I found the tenants testimony to be illogical at times and inconsistent, and therefore unreliable. I further find that the tenant decided to disregard clear and explicit instructions from JL and EC to not allow AM onto the property and that it could affect her tenancy. The tenant did not heed the warnings and chose to bring in an individual

that had physically assaulted another tenant and to disregard an order from the Branch that removed him from the property.

Alternatively, JL was clear and concise in providing testimony and referring to the documentation when needed to support his position. JL provided documentation from four tenants that were very upset to see AM on the property that caused great anxiety and fear for several of them. JL testified that he and the staff made it very clear, that AM was not to be on the property at anytime as they had taken great pains to abide by the process and to remove him legally through the dispute resolution process through the Residential Tenancy Branch. JL testified that the tenant disregarded the entire process, the landlord's warnings and the order from the Branch removing AM, and in doing so, put other tenants and the landlord at risk.

I find that the landlord has provided sufficient evidence to support the issuance of the Notice on both grounds, accordingly; the tenancy is terminated.

Section 55 of the *Act* reads in part 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 was issued on the correct form and included all the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

As I have found that the tenancy is over, the tenants' application for a rent reduction, an order to provide services or facilities, and order to have the landlord comply with the *Act*, regulation or tenancy agreement, are hereby dismissed.

Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant was given full opportunity to present their claim and provide evidence, however they only briefly touched on it and did not return to the monetary claim. The tenant did not provide sufficient evidence to satisfy any of the four elements as required and noted above. Based on the insufficient evidence before me, I dismiss the tenants monetary claim in its entirety without leave to reapply.

The tenant has not been successful in any part of their application.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. 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.

The tenant's application is dismissed in its entirety without leave to reapply.

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 17, 2022

Residential Tenancy Branch