Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RP, PSF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy For Cause, dated October 19, 2021 (the One Month Notice);
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs to be made to the unit, having contacted the Landlord in writing; and
- an order for the Landlord to provide services or facilities required by the tenancy agreement or law.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served their Notice of Dispute Resolution Proceeding (NDRP) on the Landlord by registered mail on November 3, 2021. The Landlord confirmed receipt of the NDRP. The Tenant testified they served the bulk of their evidence on the Landlord in person on November 26, 2021, which the Landlord confirmed. The Landlord confirmed they were able to review the Tenant's evidence, which was provided in digital form. The Tenant also uploaded late evidence to the Residential Tenancy Branch (RTB) and served it on the Landlord on December 9, 2021, four days before the hearing. While I find the Tenant served the NDRP and their evidence on the Landlord in accordance with section 89 of the Act, as, according to RTB Rule of Procedure 3.14, the Tenant's

evidence deadline was 14 days before the hearing, I informed the parties I would not consider the Tenant's late evidence in my decision.

The Landlord testified they served their responsive evidence on the Tenant by registered mail on November 23, 2021. The Tenant confirmed they received the documents. I find the Landlord served the Tenant in accordance with section 89 of the Act.

Preliminary Matter

The RTB Rule of Procedure 2.3 states:

> **2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismissed the Tenant's application for an order to reduce rent for repairs, services, or facilities agreed upon but not provided; an order for repairs to be made to the unit, having contacted the Landlord in writing; and an order for the Landlord to provide services or facilities required by the tenancy agreement or law.

Issues to be Decided

1) Is the Tenant entitled to an order to cancel the One Month Notice?
2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

Two versions of the tenancy agreement were submitted as evidence by the parties. However, the parties agreed on the following particulars of the tenancy. It began on May 1, 2021 for a fixed term until April 30, 2022, after which it may continue month to month; rent is $975.00, due on the first of the month; and the Tenant paid a security deposit of $490.00, which the Landlord still holds.

Both versions of the tenancy agreement submitted by the parties indicate that water is included in the rent, and that electricity, heat, and natural gas are not. Neither version refers to how or when utilities are to be paid by the Tenant.

The Landlord testified they served the Tenant with the One Month Notice on October 19, 2021 by posting it on the door. The Tenant testified they received the Notice the same day. The Tenant submitted their application to dispute the One Month Notice on October 29, 2021, and continues to occupy the rental unit.

A copy of the One Month Notice was submitted as evidence. It is signed and dated by the Landlord, gives an address for the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. The One Month Notice does not specify the unit information for the rental address, and lists an incorrect city for the rental address. The One Month Notice indicates the tenancy is ending because:

- the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause(s) section of the One Month Notice describes issues with the Tenant paying their share of the utility payments to another tenant, and “other documented instances of you significantly interfering with or unreasonably disturbing another occupant or the landlord.”

The Landlord testified that the way the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord is that the Tenant has been “severely behind” in their payment of utilities, since the beginning of the tenancy. The Landlord testified it is the upstairs tenant the Tenant is unreasonably disturbing, because the Tenant is not keeping up with their utility payments to the upstairs tenant. The Landlord testified that the agreement they made with the Tenant was that the downstairs Tenant pays one third of the utilities to the upstairs tenant. But, if the upstairs unit were to be vacant, the downstairs Tenant would pay their one third of the utilities to the Landlord. The Landlord testified this arrangement was a verbal agreement they made with the Tenant when the Tenant first moved in and was not written into the tenancy agreement.

When I asked the Landlord if they had a discussion with the Tenant as to when utilities are due, the Landlord indicated that having to tell a person to pay bills before the due date seemed unreasonable.

The Landlord testified that on August 25, 2021, the Tenant called them after 11:00 p.m., and left an angry message in which the Tenant accused the upstairs tenant of vandalizing the Tenant’s property. The Landlord submitted as evidence a written

account of the phone message, stating it was “an angry message full of accusations, demands and threats,” and that “at the end of the message [the Tenant] said, in a threatening tone, “There will be consequences… there will be consequences.” The Landlord testified that when they spoke to the upstairs tenant, the upstairs tenant described how the bottom fell out of one of the Tenant’s potted plants when the upstairs tenant moved it out of the way while doing yard work.

The Landlord also testified that the Tenant has harassed the Landlord and the upstairs tenant by threatening to report to the authorities that the upstairs tenant is operating an illegal business out of their rental unit, with the Landlord’s knowledge.

The Landlord provided as evidence a written submission in which they state that the primary evidence the Tenant supplied to support the allegation are Facebook pages showing content from October 2020 and earlier, from a time the upstairs tenant had a business located elsewhere, not in their rental unit. The Landlord submitted as evidence a copy of the Tenant’s August 26, 2021 email in which they made the accusation.

The Landlord provided as evidence a copy of a September 2, 2021 email from the upstairs tenant, in which the upstairs tenant writes that they and their family are being harassed by the downstairs Tenant:

> From the moment [the Tenant] moved in he has created tension and has made our living conditions very stressful. We are at the point now where we try to avoid him as much as possible. It seems we cannot enter the garage without [the Tenant] making himself present and creating conflict. As much as I try io shut it down he persists and makes things very uncomfortable. We are feeling harassed. [The Tenant] has created conflict with not only me, but my kids. He was very persistent with my [child] about a vehicle being parked on the street and that it should be moved. The driver ([child’s] friend) was in the car, so clearly there was not issue or reason to even mention. [The Tenant] made my daughter feel very uncomfortable. I don't know [the Tenant], however everything he has done, the constant complaints and the threats to try to have me evicted puts a level of concern for our safety. … In the six years that we have lived here I have never experience [sic] so much anxiety on a daily bases [sic] because of a downstairs tenant. I no longer can use the backyard or the garage without feeling anxious. … [The Tenant] has made our living conditions over the passed [sic] 4 months very unhealthy.

The Landlord also submitted as evidence an email to the Tenant, dated September 4, 2021, in which the Landlord warns the Tenant about their behaviour described in the upstairs tenant's complaint.

The Landlord submitted as evidence a second complaint letter from the upstairs tenant, dated November 6, 2021, in which the upstairs tenant reiterates their concerns from the September 2021 email.

The Landlord testified that the material term the Tenant is breaching is regarding the payment of utilities, a term which the Landlord stated they forgot to include in the tenancy agreement.

The Tenant testified that in August 2021, they sent the upstairs tenant and the Landlord a proposal for how the utilities should be paid. The Tenant testified that at that point, three months into in the tenancy, there was no agreement in place around the payment of utilities.

The Landlord testified they sent the Tenant a demand letter on September 12, 2021. A copy of the letter was submitted as evidence. It indicates the Tenant owes the upstairs tenant $135.26 for utilities.

The Tenant testified that they responded to the Landlord's demand letter with a second proposal for a "conscionable" payment agreement for utilities. The Tenant testified that they had not agree to deal with a third party, and that there is no material term in the tenancy agreement indicating they must.

The Tenant testified that during the walk-through of the rental unit, prior to signing the tenancy agreement, the Landlord said that utilities are $50.00 in summer, and $70.00 in winter. The Tenant testified they understood they would be dealing with the Landlord regarding utilities; they did not receive an invoice for utilities until three months into the tenancy; and that when the Tenant moved in, the Landlord had not disclosed they had an "unconscionable agreement" with the upstairs tenant around the payment of utilities.

Analysis

Based on the parties' testimony, I find the Landlord served the Tenant the One Month Notice on October 19, 2021, in accordance with section 88 of the Act, and the Tenant received it on the same day.

Section 52 of the Act states that for a notice to end tenancy to be effective, it must give the address of the rental unit. Although the Landlord did not complete the unit section of the One Month Notice, and listed the incorrect city for the rental unit, the tenant raised no question about which rental unit the Notice referred to. Section 68 of the Act includes:

> **68** (1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that
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> (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
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> (b) in the circumstances, it is reasonable to amend the notice.

As I am satisfied the Tenant knew the information omitted from the One Month Notice, and I found that in the circumstances, it was reasonable to amend the Notice, I proceeded with considering its merits.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Tenant received the Notice on October 19, 2021 and applied to dispute the Notice on October 29, 2021, I find the Tenant met the 10-day deadline.

Section 47 of the Act includes that a landlord may end a tenancy if a tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord; or
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I accept the affirmed testimony of the Landlord and Tenant that the Landlord requires the Tenant to pay utility costs to the upstairs tenant. This arrangement is considered an "unconscionable" arrangement, as contemplated by Residential Tenancy Policy Guideline 1. *Landlord & Tenant – Responsibility for Residential Premises*, which states:

> SHARED UTILITY SERVICE
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> 1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable[5] as defined in the Regulations.

I am not surprised the arrangement has resulted in conflict between the tenants, and I reject any issues around the Tenant's payment of utility bills as a valid reason for the Landlord serving the One Month Notice.

I would strongly encourage the Landlord to bring their practice regarding their tenants' payment of utility bills into accordance with the Residential Tenancy Branch Policy Guidelines and the Act.

Based on the testimony and evidence before me, I make the following additional findings.

I accept the Landlord's testimony and documentary evidence that the Tenant has threatened the Landlord and the upstairs tenant and harassed the upstairs tenant.

Based on the above, I find the Tenant has significantly interfered with or unreasonably disturbed another occupant and the Landlord.

Therefore, in accordance with section 47 of the Act, I find the Landlord is entitled to an order of possession.

As the tenancy is ending, I find it is not necessary for me to consider the Landlord's claim that the Tenant has breached a material term of the tenancy.

Conclusion

The Tenant's application is dismissed; the One Month Notice is upheld.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession 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 04, 2022

Residential Tenancy Branch