



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIKVA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC ERP MNDCT

Introduction

The tenant applied under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated October 6, 2021 (1 Month Notice), for emergency repairs for health or safety reasons, and for a monetary claim of \$5,224.00. The filing fee was waived.

The tenant, counsel for the landlord, LM (counsel), the property manager for the landlord, JO (property manager), the director of operations for the landlord, MB (director), the executive director for the landlord, FJ (executive director), and a manager for the landlord, AG (manager) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary and digital evidence prior to this hearing. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Regarding late evidence, the tenant submitted most of their evidence late and contrary to RTB Rule 3.14. As a result, I have excluded all but two of the video evidence files that counsel stated they had no issue agreeing to admit into evidence. As a result, only two video files of the late excluded evidence were considered, which will be address further below. The parties were reminded that the tenant filed their application on October 8, 2021, and that RTB Rule 2.5 applies and states in part:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;

- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- **copies of all other documentary and digital evidence to be relied on in the proceeding**, subject to Rule 3.17 [*Consideration of new and relevant evidence*].
[emphasis added]

Preliminary and Procedural Matters

The parties were informed at the outset of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice at this proceeding. The monetary claim listed on the tenant's application is **dismissed, with leave to re-apply**. I will address whether leave is granted for emergency repairs later in this decision.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on April 1, 2019. The parties agreed that monthly rent is \$1,220.00 per month and is due on the first day of each month.

The tenant confirmed in their application that they received the 1 Month dated October 6, 2021, on October 6, 2021, which was served in person. The tenant disputed the 1 Month Notice on October 8, 2021 which is within the 10-day timeline provided for under section 47 of the Act. The effective vacancy date indicated on the 1 Month Notice is listed as November 30, 2021.

On the 1 Month Notice, the landlord alleges the following four causes:

Tenant has allowed an unreasonable notice

☐ Tenant is repeatedly late paying rent

☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):

☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.

☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

☒ put the landlord's property at significant risk

☐ Tenant has not done required repairs or maintenance

☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

☐ Tenant has provided false information to prospective tenant or purchaser of the rental unit/site or property

The landlord was asked to present their evidence related first to the top two causes listed above. Counsel submits and referred to Appendix 1 attached to the 1 Month Notice which reads as follows with personal information redacted to protect privacy:

Details of Ongoing Significant Interference and Disruption at Rental Property
Appendix 1

On September 15, 2021, you were observed by another tenant to be involved in a physical altercation with a neighbour in the lobby area of the building. Specifically, you were observed striking the neighbour with your fists and calling names and telling the neighbour "You should get out of here and go back to your country." This altercation caused significant distress to the other tenant, who felt unsafe in the building, contacted 911 and was advised to remain inside their own unit for their safety. The VPD attended and spent considerable time on site speaking to multiple people at the building. (VPD file: [redacted])

On August 11, 2021, you received a Breach of Tenancy letter related to a loud verbal altercation in front of and inside the building, involving the same neighbour. The VPD also attended that incident.

☐ has also issued you Breach of Tenancy notices:

- May 7, 2021 – for continuing to feed birds and other wildlife from your patio
- April 22, 2021 – for correspondence with [redacted] and Tikva Housing Society that contained sexist and misogynist comments, profanities, sexual references, and implied threats.

A previous property management company also issued you letters or notices:

- November 5 and 12, 2020 – for feeding birds and animals from your balcony
- June 4, 2020 – related to complaints of cannabis smoke and aggressive behavior toward other tenants
- April 7, 2020 – for cannabis smoke from your suite into the hallway and other tenant suites
- July 30, 2019 – for aggressive behavior towards other tenants and contractors.

Counsel referred to the property manager who testified that the tenant and another occupant of the building from Unit 101 (N) had a physical fight on September 15, 2021 which terrified the lady nearby (H) and that the property manager received reports from N, H, the property manager from the building next door and the tenant about what happened. Although counsel and the property manager could not determine who was the cause of the physical fight between the tenant and N, the video evidence shows that the tenant went up to the door of N and had their phone recording and although most of the footage was obscured, the audio clip supports that both parties were blaming the other for assaulting them.

Counsel referred to the written statements from N and another building occupant, EF (EF). EF writes as follows in part:

Well things finally came to head today between (N) and (the tenant) It began with (the tenant) assaulting (N) with his bicycle in the back alley as he carried in his groceries from his car. Then it was an all out brawl in the lobby with the two thrashing about and (the tenant) finally assaulting (N) with Pepper spray.

I know that you are probably quite fed up with this matter with (the tenant) and his bad behaviour. But the longer this goes on, none of us here can live in peace and harmony while under threat of a mentally challenged man with a Napoleon mentality. Is it fair to the rest of us to live in such fear? Do I now have to worry about being pepper sprayed if I happen to say anything or give him a look he doesn't like? At what point do you find the way to remove him for our own safety?

On another point, the lobby fire door that leads to the other floors now no longer closes properly. Apparently, (N) saw (the tenant) fiddling with the auto closer mechanism so that there isn't enough force to fully close the door. He apparently did this so that he can slither out in the wee hours of the morning to go dumpster diving without anyone hearing him leaving or returning. I'm informing you since (the property manager) has been informed, but nothing was done. Again, another violation of our safety.

This has escalated to the point of resident safety. Even the police that attended suggested that (N) find another place to stay for a

couple of weeks to be safe from another assault. I am just hoping that this does not get to the point of "I told you so". Let' shope I don't have to.

[names redacted to protect privacy]

In the second video reviewed, the tenant is seen and heard yelling at N, "you gotta go" and instead of deescalating, the tenant appeared to be antagonizing N.

The tenant denies using pepper spray and being the cause of the physical altercations. The tenant also denies what EF wrote in their witness statement and claims that EF had assaulted him on August 10th.

Counsel submits that they personally spoke to H, the woman who was terrified from witnessing the assault and described the tenant as the aggressor in the fight between the tenant and N. Counsel stated that H directly advised them that they feared for their safety due to the tenant, even knowing that N had vacated the rental building in October or November of 2021. Counsel also submits that they had a direct conversation with EF, who also confirmed that the tenant was the aggressor in the fight between the tenant and N.

The tenant denied having any current criminal charges as a result of the assault alleged on September 15, 2021. There is no dispute that the police attending and spoke with multiple people to get witness statements regarding the September 15, 2021 incident.

The tenant was advised during the hearing that the tenancy was ending as I was satisfied that the landlord met the burden of proof by providing sufficient evidence to prove the first cause of the four causes listed on the 1 Month Notice. As a result, I did not find it necessary to consider the remaining three causes listed on the 1 Month Notice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – The 1 Month Notice is dated October 6, 2021 and has an effective vacancy date of November 30, 2021, which has passed. The parties confirmed that the tenant has paid for use and occupancy for February 2022.

The tenant disputed the 1 Month Notice within the 10-day timeline as provided under section 47 of the Act.

The onus of proof is on the landlord to prove that the 1 Month Notice is valid. After viewing the two videos from the tenant, which I find do not exonerate the tenant and in fact show the tenant was recording on their phone before approaching N on two different dates, that the tenant was at least 50% responsible for the physical fight between the tenant and N, and the second incident where I find the tenant is antagonizing N in the hallway versus deescalating the situation.

Furthermore, I afford significant weight to counsel's submission that they directly spoke both H, who stated they were fearful of the tenant, and EF, who confirmed that the tenant was the aggressor in the fight between the tenant and N on September 15, 2021.

Therefore, I do not find the tenant to be credible and I afford very little weight to their testimony. I also find that the video evidence from the tenant supports the tenant was at least 50% at fault for any physical altercation and that violence in any tenancy is unreasonable and that the tenant must vacate the rental building as a result.

As I find the landlord has provided sufficient evidence to support the 1 Month Notice, I **dismiss** the tenant's application in full, **without leave to reapply**. I **uphold** the landlord's 1 Month Notice. Section 55 of the Act applies and states:

Order of possession for the landlord

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.**

[emphasis added]

I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. Consequently, I grant the landlord an order of possession effective **February 28, 2022 at 1:00 p.m.** I have used this date as the tenant has paid for use and occupancy for February 2022. As indicated above, I do not find it necessary to consider any of the other three causes as the landlord has provided sufficient evidence to prove the first cause.

As the tenancy ended on November 30, 2021, I do not grant the tenant leave to reapply for emergency repairs as I find that such a claim is now moot.

Conclusion

The tenant's application is dismissed, without leave to reapply. The tenancy ended on November 30, 2021.

The landlord has been granted an order of possession effective February 28, 2022 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenant is not granted leave to reapply for emergency repairs under the Act as the tenancy ended on November 30, 2021.

This decision will be emailed to both parties.

The order of possession will be emailed to counsel only for service on the tenant by the landlord. The tenant is cautioned that they can be held liable for all costs related to enforcing the order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 17, 2022

Residential Tenancy Branch